



# भारत का राजपत्र The Gazette of India

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सं. 6] नई दिल्ली, फरवरी 2—फरवरी 8, 2014, शनिवार/माघ 13—माघ 19, 1935  
No. 6] NEW DELHI, FEBRUARY 2—FEBRUARY 8, 2014, SATURDAY/MAGHA 13—MAGHA 19, 1935

भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके  
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)  
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं  
Statutory Orders and Notifications Issued by the Ministries of the Government of India  
(Other than the Ministry of Defence)

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय  
(कार्मिक और प्रशिक्षण विभाग)  
नई दिल्ली, 6 जनवरी, 2014

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES  
AND PENSIONS  
(Department of Personnel and Training)  
New Delhi, the 6th January, 2014

**का.आ. 402.**—दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार, हिमाचल प्रदेश राज्य सरकार, गृह विभाग, शिमला द्वारा उनकी दिनांक 4 दिसम्बर, 2012 की अधिसूचना सं गृह (ए)ए(9)-7/2010 के तहत दी गई सहमति से डॉ. राहुल यादव (रैंक सं. यूआर-1439 में श्रेणी) द्वारा कथित रूप से किए गए अपराधों; जो 50% अखिल भारतीय कोटा के अधीन आयोजित काउन्सिलिंग, 2011 तथा एम.डी. जनरल मेडीसिन में उनके दाखिल के दौरान पकड़े गए छद्मव्यक्तता मामले में संगत धाराओं के अधीन दंडनीय हैं; तथा उपर्युक्त लिखित अपराधों के संबंध में उकसाने एवं षडयंत्र करने का अन्वेषण करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों एवं अधिकार क्षेत्र को पूरे हिमाचल प्रदेश राज्य तक विस्तृत करती है।

**S.O. 402.**—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 5 of 1946), the Central Government with the consent of the State Government of Himachal Pradesh, Department of Home, Shimla vide Notification No. Home (A)A(9)-7/2010 dated 4th December, 2012, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Himachal Pradesh for investigation of the offences alleged to have been committed by Dr. Rahul Yadav (Category in rank No. UR-1439), punishable under relevant sections in impersonation case caught during the counseling 2011 held under the 50% All India Quota and his admission in M.D. General Medicine and abetments and conspiracies in relation to the above mentioned offences.

[फा. सं. 228/37/2012-ए.वी.डी-II]  
राजीव जैन, अवर सचिव

[F.No. 228/37/2012-AVD-II]  
RAJIV JAIN, Under Secy.

नई दिल्ली, 17 जनवरी, 2014

**का.आ. 403.**—केन्द्रीय सरकार एतद्द्वारा दंड प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं. 2) की धारा 24 की उप-धारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, समस्त कर्नाटक राज्य के स्थानीय क्षेत्र में दिल्ली विशेष पुलिस स्थापना (के.अ. ब्यूरो) द्वारा संस्थापित परीक्षण न्यायालयों में मामलों का संचालन करने तथा विधि द्वारा स्थापित पुनरीक्षण अथवा अपीलीय न्यायालयों में इन मामलों से उत्पन्न अपीलों, पुनरीक्षणों अथवा/या इनसे उत्पन्न अन्य मामलों का संचालन करने के लिए श्री राजेश कुमार, के.अ. ब्यूरो के अभियोजन अधिकारी को लोक अभियोजक नियुक्त करती है।

[फा. सं. 225/44/2013-ए.वी.डी-II]

राजीव जैन, अवर सचिव

New Delhi, the 17th January, 2014

**S.O. 403.**—In exercise of the powers conferred by sub-section (2) of section 24 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Central Government hereby appoints Shri Rajesh Kumar, Prosecuting Officer of Central Bureau of Investigation as Public Prosecutor for conducting cases in the local area comprising the whole State of Karnataka instituted by the Delhi Special Police Establishment (C.B.I.) in the trial courts and appeals, revisions or other matters arising out of these cases in revisional or Appellate Courts, established by law.

[F. No. 225/44/2013-AVD-II]

RAJIV JAIN, Under Secy.

नई दिल्ली, 17 जनवरी, 2014

**का.आ. 404.**—केन्द्रीय सरकार एतद्द्वारा दंड प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं. 2) की धारा 24 की उप-धारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, समस्त ओडिशा राज्य के स्थानीय क्षेत्र में दिल्ली विशेष पुलिस स्थापना (के.अ. ब्यूरो) द्वारा संस्थापित परीक्षण न्यायालयों में मामलों का संचालन करने तथा विधि द्वारा स्थापित पुनरीक्षण अथवा अपीलीय न्यायालयों में इन मामलों से उत्पन्न अपीलों, पुनरीक्षणों अथवा/या इनसे उत्पन्न अन्य मामलों का संचालन करने के लिए सर्वश्री लाल चंद पाल एवं आशीष जायसवाल, के.अ. ब्यूरो के अभियोजन अधिकारी को लोक अभियोजक नियुक्त करती है।

[फा. सं. 225/44/2013-ए.वी.डी-II]

राजीव जैन, अवर सचिव

New Delhi, the 17th January, 2014

**S.O. 404.**—In exercise of the powers conferred by sub-section (2) of section 24 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Central Government hereby appoints S/Shri Lal Chand Pal and Ashish Jaiswal, Prosecuting Officer of Central Bureau of Investigation as Public Prosecutor for conducting cases in the local area

comprising the whole State of Odisha instituted by the Delhi Special Police Establishment (C.B.I.) in the trial courts and appeals, revisions or other matters arising out of these cases in revisional or Appellate Courts, established by law.

[F. No. 225/44/2013-AVD-II]

RAJIV JAIN, Under Secy.

नई दिल्ली, 17 जनवरी, 2014

**का.आ. 405.**—केन्द्रीय सरकार एतद्द्वारा दंड प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं. 2) की धारा 24 की उप-धारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, समस्त जम्मू एवं कश्मीर राज्य के स्थानीय क्षेत्र में दिल्ली विशेष पुलिस स्थापना (के.अ. ब्यूरो) द्वारा संस्थापित परीक्षण न्यायालयों में मामलों का संचालन करने तथा विधि द्वारा स्थापित पुनरीक्षण अथवा अपीलीय न्यायालयों में इन मामलों से उत्पन्न अपीलों, पुनरीक्षणों अथवा/या इनसे उत्पन्न अन्य मामलों का संचालन करने के लिए श्री कपिल वर्मा, के.अ. ब्यूरो के अभियोजन अधिकारी को लोक अभियोजक नियुक्त करती है।

[फा. सं. 225/44/2013-ए.वी.डी-II]

राजीव जैन, अवर सचिव

New Delhi, the 17th January, 2014

**S.O. 405.**—In exercise of the powers conferred by sub-section (2) of section 24 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Central Government hereby appoints Shri Kapil Verma, Prosecuting Officer of Central Bureau of Investigation as Public Prosecutor for conducting cases in the local area comprising the whole State of Jammu and Kashmir instituted by the Delhi Special Police Establishment (C.B.I.) in the trial courts and appeals, revisions or other matters arising out of these cases in revisional or Appellate Courts, established by law.

[F. No. 225/44/2013-AVD-II]

RAJIV JAIN, Under Secy.

नई दिल्ली, 17 जनवरी, 2014

**का.आ. 406.**—केन्द्रीय सरकार एतद्द्वारा दंड प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं. 2) की धारा 24 की उप-धारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, समस्त बिहार राज्य के स्थानीय क्षेत्र में दिल्ली विशेष पुलिस स्थापना (के.अ. ब्यूरो) द्वारा संस्थापित परीक्षण न्यायालयों में मामलों का संचालन करने तथा विधि द्वारा स्थापित पुनरीक्षण अथवा अपीलीय न्यायालयों में इन मामलों से उत्पन्न अपीलों, पुनरीक्षणों अथवा/या इनसे उत्पन्न अन्य मामलों का संचालन करने के लिए सर्वश्री उमाशंकर त्रिपाठी एवं अजय पाल, के.अ. ब्यूरो के अभियोजन अधिकारी को लोक अभियोजक नियुक्त करती है।

[फा. सं. 225/44/2013-ए.वी.डी-II]

राजीव जैन, अवर सचिव

New Delhi, the 17th January, 2014

**S.O. 406.**—In exercise of the powers conferred by sub-section (2) of section 24 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Central Government hereby appoints S/Shri Umashankar Tripathi and Ajai Pal, Prosecuting Officer of Central Bureau of Investigation as Public Prosecutor for conducting cases in the local area comprising the whole State of Bihar instituted by the Delhi Special Police Establishment (C.B.I.) in the trial courts and appeals, revisions or other matters arising out of these cases in revisional or Appellate Courts, established by law.

[F. No. 225/44/2013-AVD-II]

RAJIV JAIN, Under Secy.

नई दिल्ली, 17 जनवरी, 2014

**का.आ. 407.**—केन्द्रीय सरकार एतद्द्वारा दंड प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं. 2) की धारा 24 की उप-धारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, समस्त महाराष्ट्र राज्य के स्थानीय क्षेत्र में दिल्ली विशेष पुलिस स्थापना (के.अ. ब्यूरो) द्वारा संस्थापित परीक्षण न्यायालयों में मामलों का संचालन करने तथा विधि द्वारा स्थापित पुनरीक्षण अथवा अपीलीय न्यायालयों में इन मामलों से उत्पन्न अपीलों, पुनरीक्षणों अथवा/या इनसे उत्पन्न अन्य मामलों का संचालन करने के लिए श्री गुरविंदरजीत सिंह, के.अ. ब्यूरो के अभियोजन अधिकारी को लोक अभियोजक नियुक्त करती है।

[फा. सं. 225/44/2013-एवीडी-II]

राजीव जैन, अवर सचिव

New Delhi, the 17th January, 2014

**S.O. 407.**—In exercise of the powers conferred by sub-section (2) of section 24 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Central Government hereby appoints Shri Gurvinderjit Singh, Prosecuting Officer of Central Bureau of Investigation as Public Prosecutor for conducting cases in the local area comprising the whole State of Maharashtra instituted by the Delhi Special Police Establishment (C.B.I.) in the trial courts and appeals, revisions or other matters arising out of these cases in revisional or Appellate Courts, established by law.

[F. No. 225/44/2013-AVD-II]

RAJIV JAIN, Under Secy.

नई दिल्ली, 17 जनवरी, 2014

**का.आ. 408.**—केन्द्रीय सरकार एतद्द्वारा दंड प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं. 2) की धारा 24 की उप-धारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, समस्त राष्ट्रीय राजधानी क्षेत्र दिल्ली राज्य के स्थानीय क्षेत्र में दिल्ली विशेष पुलिस स्थापना (के.अ. ब्यूरो) द्वारा संस्थापित परीक्षण न्यायालयों में मामलों का संचालन करने तथा विधि द्वारा स्थापित पुनरीक्षण अथवा अपीलीय न्यायालयों में इन मामलों से उत्पन्न अपीलों, पुनरीक्षणों अथवा/या इनसे उत्पन्न

अन्य मामलों का संचालन करने के लिए श्रीमती शम्पा टिकैत एवं श्री नवीन कुमार गिरी, के.अ. ब्यूरो के अभियोजन अधिकारी को लोक अभियोजक नियुक्त करती है।

[फा. सं. 225/44/2013-एवीडी-II]

राजीव जैन, अवर सचिव

New Delhi, the 17th January, 2014

**S.O. 408.**—In exercise of the powers conferred by sub-section (2) of section 24 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Central Government hereby appoints Smt. Shampa Tikait and Shri Navin Kumar Giri, Prosecuting Officer of Central Bureau of Investigation as Public Prosecutor for conducting cases in the local area comprising the whole State of National Capital Territory of Delhi instituted by the Delhi Special Police Establishment (C.B.I.) in the trial courts and appeals, revisions or other matters arising out of these cases in revisional or Appellate Courts, established by law.

[F. No. 225/44/2013-AVD-II]

RAJIV JAIN, Under Secy.

नई दिल्ली, 17 जनवरी, 2014

**का.आ. 409.**—केन्द्रीय सरकार एतद्द्वारा दंड प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं. 2) की धारा 24 की उप-धारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, समस्त उत्तर प्रदेश राज्य के स्थानीय क्षेत्र में दिल्ली विशेष पुलिस स्थापना (के.अ. ब्यूरो) द्वारा संस्थापित परीक्षण न्यायालयों में मामलों का संचालन करने तथा विधि द्वारा स्थापित पुनरीक्षण अथवा अपीलीय न्यायालयों में इन मामलों से उत्पन्न अपीलों, पुनरीक्षणों अथवा/या इनसे उत्पन्न अन्य मामलों का संचालन करने के लिए सर्वश्री कुलदीप पुष्कर, अशोक भारतेन्दु एवं प्रियांसु सिंह, के.अ. ब्यूरो के अभियोजन अधिकारी को लोक अभियोजक नियुक्त करती है।

[फा. सं. 225/44/2013-एवीडी-II]

राजीव जैन, अवर सचिव

New Delhi, the 17th January, 2014

**S.O. 409.**—In exercise of the powers conferred by sub-section (2) of section 24 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Central Government hereby appoints S/Shri Kuldeep Pushkar, Ashok Bhartendu and Priyanshu Singh, Prosecuting Officer of Central Bureau of Investigation as Public Prosecutor for conducting cases in the local area comprising the whole State of Uttar Pradesh instituted by the Delhi Special Police Establishment (C.B.I.) in the trial courts and appeals, revisions or other matters arising out of these cases in revisional or Appellate Courts, established by law.

[F. No. 225/44/2013-AVD-II]

RAJIV JAIN, Under Secy.

नई दिल्ली, 21 जनवरी, 2014

**का.आ. 410.**—केन्द्रीय सरकार एतद्द्वारा दंड प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं. 2) की धारा 24 की उप-धारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, दिल्ली विशेष पुलिस स्थापना के द्वारा अन्वेषित किए गए मामलों के अभियोजन, अपीलों, पुनरीक्षणों तथा उन्हीं मामलों से उत्पन्न अन्य विषयों का संचालन लखनऊ स्थित इलाहाबाद उच्च न्यायालय के लखनऊ पीठ में करने हेतु सर्वश्री रिशाद मुर्तजा और अमरजीत सिंह राखरा, वकीलों को केंद्रीय अन्वेषण ब्यूरो के विशेष लोक अभियोजक नियुक्त करती है।

[फा. सं. 225/17/2013-एवीडी-II]

राजीव जैन, अवर सचिव

New Delhi, the 21st January, 2014

**S.O. 410.**—In exercise of the powers conferred by sub-section (8) of section 24 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Central Government hereby appoints S/Shri Rishad Murtaza and Amarjeet Singh Rakhra, Advocates as Special Public Prosecutor of the Central Bureau of Investigation in the Lucknow Bench of Allahabad High Court at Lucknow for conducting the prosecution, appeals, revisions or other matters arising out of the cases investigated by the Delhi Special Police Establishment.

[F.No. 225/17/2013-AVD-II]

RAJIV JAIN, Under Secy.

नई दिल्ली, 22 जनवरी, 2014

**का.आ. 411.**—केन्द्रीय सरकार एतद्द्वारा दंड प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं. 2) की धारा 25 की उप-धारा (1ए) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत के किसी राज्य या संघ शासित प्रदेश के सक्षम क्षेत्राधिकार के न्यायालयों में, जहां उपरोक्त धारा के उपबंध लागू होते हैं, दिल्ली विशेष पुलिस स्थापना द्वारा संस्थापित मामलों का संचालन करने हेतु केंद्रीय अन्वेषण ब्यूरो के निम्नलिखित अभियोजन अधिकारियों को सहायक लोक अभियोजक के रूप में नियुक्त करती है :-

सर्वश्री

1. जय हिन्द
2. श्रीमती अंजली पी. लोखंडे
3. कमालुदीन

[फा. सं. 225/34/2013-एवीडी-II]

राजीव जैन, अवर सचिव

New Delhi, the 22nd January, 2014

**S.O. 411.**—In exercise of the powers conferred by sub-section (1A) of section 25 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Central Government

hereby appoints following Prosecuting Officers of the Central Bureau of Investigation as Assistant Public Prosecutor for conducting cases instituted by Delhi Special Police Establishment in the courts of competent jurisdiction in any State or Union Territory of India to which the provision of the aforesaid section apply :—

S/Shri

1. Jai Hind
2. Smt. Anjali P. Lokhande
3. Kamaludin

[F.No. 225/34/2013-AVD-II]

RAJIV JAIN, Under Secy.

नई दिल्ली, 22 जनवरी, 2014

**का.आ. 412.**—केन्द्रीय सरकार एतद्द्वारा दंड प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं. 2) की धारा 24 की उप-धारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, दिल्ली विशेष पुलिस स्थापना (के.अ.ब्यूरो) द्वारा संस्थापित, किसी राज्य या संघीय क्षेत्र, जहां उपरोल्लिखित धारा के उपबंध लागू होते हैं, में विधि द्वारा स्थापित परीक्षण न्यायालयों और पुनरीक्षण या अपीलीय न्यायालयों में इन मामलों से उत्पन्न अपीलों, पुनरीक्षणों या अन्य प्रकरणों के संचालन हेतु केंद्रीय अन्वेषण ब्यूरो के निम्नलिखित अभियोजन अधिकारियों को विशेष लोक अभियोजक के रूप में नियुक्त करती है :—

सर्वश्री

1. अश्वनी कुमार जोशी
2. श्रीमती कैरानाथ श्रीधरन हेमा
3. राकेश कुमार
4. जसविन्द्र कुमार भट्टी
5. संजय कुमार सिंह
6. धीरेन्द्र नाथ पांडे
7. बी. एलेक्संडर लेनिन राजा
8. राजेश कुमार
9. सुश्री ज्योति जोनवाल
10. अमित कुमार
11. शिवनंदा बी.आर.
12. अजय सिंह
13. नवास एम.
14. विनय कुमार सिंह
15. श्रीमती शशि विश्वकर्मा

16. ओम प्रकाश
17. अनिल कुमार कुशवाहा
18. के. चेन्थिल कुमार
19. चंद्र शेखर
20. लव कुश कुमार
21. सुश्री उर्मिलजीत कौर
22. राहुल मिश्रा

18. K. Chenthil Kumar
19. Chandra Shekhar
20. Law Kush Kumar
21. Ms. Urmiljeet Kaur
22. Rahul Mishra

[F. No. 225/34/2013-AVD-II]  
RAJIV JAIN, Under Secy.

[फा. सं. 225/34/2013-एवीडी-II]  
राजीव जैन, अवर सचिव

New Delhi, the 22nd January, 2014

**S.O. 412.**—In exercise of the powers conferred by sub-section (8) of section 24 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Central Government hereby appoints following Prosecuting Officers of Central Bureau of Investigation as Special Public Prosecutor for conducting cases instituted by the Delhi Special Police Establishment (C.B.I.) in trials courts and appeals, revisions or other matters arising out of these cases in revisional or appellate Courts, established by law in any State or Union Territory to which the provisions of the aforesaid section apply :—

S/Shri

1. Ashwani Kumar Joshi
2. Smt. Karanath Sreedharan Hema
3. Rakesh Kumar
4. Jaswinder Kumar Bhatti
5. Sanjay Kumar Singh
6. Dharendra Nath Pandey
7. B. Alexander Lenin Raja
8. Rajesh Kumar
9. Ms. Jyoti Jonwal
10. Amit Kumar
11. Shivananda B.R.
12. Ajay Singh
13. Navas M.
14. Vinay Kumar Singh
15. Smt. Shashi Vishwakarma
16. Om Prakash
17. Anil Kumar Kushwaha

### वित्त मंत्रालय

( वित्तीय सेवाएं विभाग )

नई दिल्ली, 22 जनवरी, 2014

**का.आ. 413.**—कौशल विकास के लिए ऋण गारंटी निधि स्थापित करने के संबंध में मंत्रिमंडल के अनुमोदन (मामला सं. 364) के अनुसरण में निधि के व्यवस्थापक के रूप में यह विभाग एतद्वारा निधि की प्रबंधन समिति की नियुक्ति करता है, जिसमें निम्नलिखित शामिल हैं :

- (i) सचिव, वित्तीय सेवाएं विभाग - अध्यक्ष (पदेन)
- (ii) संयुक्त सचिव (आई.एफ.), वित्तीय सेवाएं विभाग- सदस्य
- (iii) संयुक्त सचिव (पी.एफ.-II), व्यय विभाग - सदस्य
- (iv) संयुक्त सचिव, श्रम एवं रोजगार मंत्रालय - सदस्य
- (v) संयुक्त सचिव, आर्थिक कार्य विभाग - सदस्य
- (vi) महा निदेशक, राष्ट्रीय कौशल विकास एजेंसी - सदस्य
- (vii) निदेशक योजना आयोग - सदस्य

[फा. सं. 1/12/2011-आईएफ-II]  
उदय भान सिंह, अवर सचिव

### MINISTRY OF FINANCE

(Department of Financial Services)

New Delhi, the 22nd January, 2014

**S.O. 413.**—Pursuant to the Cabinet approval (case No. 364) for establishment of a Credit Guarantee Fund for Skill Development, this Department as a settler of the Fund hereby appoints a Management Committee of the Fund consisting of the following:

- (i) Secretary, Department of Financial Services  
- Chairman (ex-officio),
- (ii) Joint Secretary (IF), Department of Financial Services  
- Member,
- (iii) Joint Secretary (PF.II), Department of Expenditure  
- Member,
- (iv) Joint Secretary, Ministry of Labour and Employment  
- Member,
- (v) Joint Secretary, Department of Economic Affairs  
- Member,



- (vi) Director General, National Skill Development Agency  
- Member,  
(vii) Director, Planning Commission - Member.

[F.No.1/12/2011-IF-II]

UDAI BHAN SINGH, Under Secy.

( राजस्व विभाग )

( केन्द्रीय प्रत्यक्ष कर बोर्ड )

नई दिल्ली, 22 जनवरी, 2014

**का.आ. 414.**—सर्वसाधारण की जानकारी के लिए एतद्द्वारा यह अधिसूचित किया जाता है कि केन्द्र सरकार द्वारा आयकर नियमावली, 1962 (उक्त नियमावली) के नियम 5ग और 5ड के साथ पठित आयकर अधिनियम, 1961 (उक्त अधिनियम) की धारा 35 की उप-धारा (1) के खंड (ii) के प्रयोजनार्थ अमृता विश्व विद्यापीठम यूनिवर्सिटी, कोच्चि, (पैन-एएटीएम 2403एम) संगठन को कर निर्धारण वर्ष 2013-14 और उससे आगे निम्नलिखित शर्तों के अधीन अनुसंधान कार्यकलापों में लगे 'विश्वविद्यालय, कालेज अथवा अन्य संस्थान' की श्रेणी में अनुमोदित किया गया है, नामतः :-

- (i) अनुमोदित संगठन को प्रदत्त राशियों का उपयोग वैज्ञानिक अनुसंधान के लिए किया जाएगा;
- (ii) अनुमोदित संगठन अपने संकाय सदस्यों अथवा अपने नामांकित छात्रों के माध्यम से वैज्ञानिक अनुसंधान करेगा;
- (iii) अनुमोदित संगठन वैज्ञानिक अनुसंधान के लिए इसके द्वारा प्राप्त राशि के संबंध में पृथक खाता बही रखेगा, जिसमें अनुसंधान करने के लिए प्रयुक्त राशि दर्शाई गई हो, उक्त अधिनियम की धारा 288 की उप-धारा (2) के स्पष्टीकरण में यथा परिभाषित किसी लेखाकार से अपनी खाता-बही की लेखा-परीक्षा कराएगा और उक्त अधिनियम की धारा 139 की उप-धारा (1) के अंतर्गत आय विवरणी प्रस्तुत करने की नियत तिथि तक ऐसे लेखाकार द्वारा विधिवत सत्यापित एवं हस्ताक्षरित लेखा परीक्षा रिपोर्ट, मामले में क्षेत्राधिकार रखने वाले आयकर आयुक्त अथवा आयकर निदेशक को प्रस्तुत करेगा;
- (iv) अनुमोदित संगठन प्राप्त दान और वैज्ञानिक अनुसंधान के लिए प्रयुक्त राशि का पृथक विवरण रखेगा और उपर्युक्त लेखा-परीक्षा रिपोर्ट के साथ लेखा-परीक्षक द्वारा विधिवत सत्यापित ऐसे विवरण की प्रतिलिपि प्रस्तुत करेगा।

2. केंद्र सरकार यह अनुमोदन वापस ले लेगी यदि अनुमोदित संगठन :-

- (क) पैराग्राफ 1 के उप-पैराग्राफ (iii) में उल्लिखित पृथक लेखा बही रखने में असफल रहता है; अथवा
- (ख) पैराग्राफ 1 के उप-पैराग्राफ (iii) में उल्लिखित अपनी लेखा-परीक्षा रिपोर्ट प्रस्तुत करने में असफल रहता है; अथवा

- (ग) पैराग्राफ 1 के उप-पैराग्राफ (iv) में उल्लिखित वैज्ञानिक अनुसंधान के लिए प्राप्त एवं प्रयुक्त दान का अपना विवरण प्रस्तुत करने में असफल रहता है; अथवा
- (घ) अपना अनुसंधान कार्य करना बंद कर देगा अथवा इसके अनुसंधान कार्य को वास्तविक नहीं पाया जाएगा; अथवा
- (ङ) उक्त नियमावली के नियम 5ग और 5ड के साथ पठित उक्त अधिनियम की धारा 35 की उप-धारा (1) के खंड (ii) के प्रावधानों के अनुरूप नहीं होगा और उनका पालन नहीं करेगा।

[अधिसूचना सं. 08/2014/फा. सं. 203/03/2013-आ.क.नि.-II]

ऋचा रस्तोगी, अवर सचिव ( आ.क.नि.-II )

( Department of Revenue )

( CENTRAL BOARD OF DIRECT TAXES )

New Delhi, the 22nd January, 2014

**S.O. 414 .—** It is hereby notified for general information that the organization Amrita Vishwa Vidhyapeetham University Kochi, (PAN - AAATM2403M) has been approved by the Central Government for the purpose of clause (ii) of sub-section (1) of section 35 of the Income-tax Act, 1961 (said Act), read with Rules 5C and 5E of the Income-tax Rules, 1962 (said Rules), assessment year 2013-2014 and onwards in the category of "University College and other Institution", engaged in research activities subject to the following conditions, namely:-

- (i) The sums paid to the approved organization shall be utilized for scientific research;
- (ii) The approved organization shall carry out scientific research through its faculty members or its enrolled students;
- (iii) The approved organization shall maintain separate books of accounts in respect of the sums received by it for scientific research, reflect therein the amounts used for carrying out research, get such books audited by an accountant as defined in the explanation to sub-section (2) of section 288 of the said Act and furnish the report of such audit duly signed and verified by such accountant to the Commissioner of Income-tax or the Director of Income-tax having jurisdiction over the case, by the due date of furnishing the return of income under sub-section (1) of section 139 of the said Act;
- (iv) The approved organization shall maintain a separate statement of donations received and amounts applied for scientific research and a copy of such statement duly certified by the auditor shall accompany the report of audit referred to above.

2. The Central Government shall withdraw the approval if the approved organization:-

- (a) fails to maintain separate books of accounts as referred to in sub-paragraph (iii) of paragraph 1; or
- (b) fails to furnish its audit report as referred to in sub-paragraph (iii) of paragraph 1; or
- (c) fails to furnish its statement of the donations received and sums applied for scientific research as referred to in sub-paragraph (iv) of paragraph 1; or
- (d) ceases to carry on its research activities or its research activities are not found to be genuine; or
- (e) ceases to conform to and comply with the provisions of clause (ii) of sub-section (1) of Section 35 of the said Act read with rules 5C and 5E of the said Rules.

[Notification No. 08/2014/F.No. 203/03/2013-ITA-II]

RICHA RASTOGI, Under Secy. (ITA-II)

नई दिल्ली, 22 जनवरी, 2014

**का.आ. 415.**—सर्वसाधारण की जानकारी के लिए एतद्वारा यह अधिसूचित किया जाता है कि केन्द्र सरकार द्वारा आयकर नियमावली, 1962 (उक्त नियमावली) के नियम 5ग और 5ड. के साथ पठित आयकर अधिनियम, 1961 (उक्त अधिनियम) की धारा 35 की उप-धारा (1) के खंड (ii) के प्रयोजनार्थ इंस्टीट्यूट ऑफ लीवर एंड बिलिएरी साइंसेस, नई दिल्ली, (पैन-एएएलआई0055आर) संगठन को कर निर्धारण वर्ष 2012-13 और उससे आगे निम्नलिखित शर्तों के अधीन अनुसंधान कार्यकलापों में लगे 'विश्वविद्यालय, कालेज अथवा अन्य संस्थान' की श्रेणी में अनुमोदित किया गया है, नामतः—

- (i) अनुमोदित संगठन को प्रदत्त राशियों का उपयोग वैज्ञानिक अनुसंधान के लिए किया जाएगा;
- (ii) अनुमोदित संगठन अपने संकाय सदस्यों अथवा अपने नामांकित छात्रों के माध्यम से वैज्ञानिक अनुसंधान करेगा;
- (iii) अनुमोदित संगठन वैज्ञानिक अनुसंधान के लिए इसके द्वारा प्राप्त राशि के संबंध में पृथक खाता बही रखेगा, जिसमें अनुसंधान करने के लिए प्रयुक्त राशि दर्शाई गई हो, उक्त अधिनियम की धारा 288 की उप-धारा (2) के स्पष्टीकरण में यथा परिभाषित किसी लेखाकार से अपनी खाता-बही की लेखा-परीक्षा कराएगा और उक्त अधिनियम की धारा 139 की उप-धारा (1) के अंतर्गत आय विवरणी प्रस्तुत करने की नियत तिथि तक ऐसे लेखाकार द्वारा विधिवत सत्यापित एवं हस्ताक्षरित लेखा परीक्षा रिपोर्ट, मामले में क्षेत्राधिकार रखने वाले आयकर आयुक्त अथवा आयकर निदेशक को प्रस्तुत करेगा;
- (iv) अनुमोदित संगठन प्राप्त दान और वैज्ञानिक अनुसंधान के लिए प्रयुक्त राशि का पृथक विवरण रखेगा और उपर्युक्त लेखा-परीक्षा रिपोर्ट के साथ लेखा-परीक्षक द्वारा विधिवत सत्यापित ऐसे विवरण की प्रतिलिपि प्रस्तुत करेगा।

2. केंद्र सरकार यह अनुमोदन वापस ले लेगी यदि अनुमोदित संगठन :—

- (क) पैराग्राफ 1 के उप-पैराग्राफ (iii) में उल्लिखित पृथक लेखा बही रखने में असफल रहता है; अथवा
- (ख) पैराग्राफ 1 के उप-पैराग्राफ (iii) में उल्लिखित अपनी लेखा-परीक्षा रिपोर्ट प्रस्तुत करने में असफल रहता है; अथवा
- (ग) पैराग्राफ 1 के उप-पैराग्राफ (iv) में उल्लिखित वैज्ञानिक अनुसंधान के लिए प्राप्त एवं प्रयुक्त दान का अपना विवरण प्रस्तुत करने में असफल रहता है; अथवा
- (घ) अपना अनुसंधान कार्य करना बंद कर देगा अथवा इसके अनुसंधान कार्य को वास्तविक नहीं पाया जाएगा; अथवा
- (ङ.) उक्त नियमावली के नियम 5ग और 5ड. के साथ पठित उक्त अधिनियम की धारा 35 की उप-धारा (1) के खंड (ii) के प्रावधानों के अनुरूप नहीं होगा और उनका पालन नहीं करेगा।

[अधिसूचना सं. 07/2014/फा. सं. 203/55/2012-आ.क.नि.-II]

ऋचा रस्तोगी, अवर सचिव (आ.क.नि.-II)

New Delhi, the 22nd January, 2014

**S.O. 415.**— It is hereby notified for general information that the organization Institute of Liver & Biliary Sciences, New Delhi, (PAN - AAALI0055R) has been approved by the Central Government for the purpose of clause (ii) of sub-section (1) of Section 35 of the Income-tax Act, 1961 (said Act), read with Rules 5C and 5E of the Income-tax Rules, 1962 (said Rules), assessment year 2012-2013 and onwards in the category of "University College and other Institution", engaged in research activities subject to the following conditions, namely:—

- (i) The sums paid to the approved organization shall be utilized for scientific research;
- (ii) The approved organization shall carry out scientific research through its faculty members or its enrolled students;
- (iii) The approved organization shall maintain separate books of accounts in respect of the sums received by it for scientific research, reflect therein the amounts used for carrying out research, get such books audited by an accountant as defined in the explanation to sub-section (2) of section 288 of the said Act and furnish the report of such audit duly signed and verified by such accountant to the Commissioner of Income-tax or the Director of Income-tax having jurisdiction over the case, by the due date of furnishing

the return of income under sub-section (1) of section 139 of the said Act;

- (iv) The approved organization shall maintain a separate statement of donations received and amounts applied for scientific research and a copy of such statement duly certified by the auditor shall accompany the report of audit referred to above.

2. The Central Government shall withdraw the approval if the approved organization:-

- fails to maintain separate books of accounts as referred to in sub-paragraph (iii) of paragraph 1; or
- fails to furnish its audit report as referred to in sub-paragraph (iii) of paragraph 1; or
- fails to furnish its statement of the donations received and sums applied for scientific research as referred to in sub-paragraph (iv) of paragraph 1; or
- ceases to carry on its research activities or its research activities are not found to be genuine; or
- ceases to conform to and comply with the provisions of clause (ii) of sub-section (1) of Section 35 of the said Act read with rules 5C and 5E of the said Rules.

[Notification No. 07/2014/F.No.203/55/2012-ITA-II]

**RICHA RASTOGI, Under Secy. (ITA-II)**

( वित्तीय सेवाएं विभाग )

नई दिल्ली, 22 जनवरी, 2014

**का.आ. 416.**—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खंड 3 के उप-खंड (1) और खंड 8 के उप-खंड (1) के साथ पठित, बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970/1980 की धारा 9 की उप-धारा (3) के खंड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, विजया बैंक के महाप्रबंधक श्री के. वीरा ब्रह्माजी राव (जन्म तिथि 16-05-1959), को उनके द्वारा पदभार ग्रहण करने की तारीख से पाँच वर्षों की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, पंजाब नेशनल बैंक के कार्यपालक निदेशक के रूप में नियुक्त करती है।

[फा. सं. 4/5/2012-बीओ-I]

विजय मल्होत्रा, अवर सचिव

**(Department of Financial Services)**

New Delhi, the 22nd January, 2014

**S.O. 416.**—In exercise of the powers conferred by clause (a) of sub-section (3) of Section 9 of the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970/1980 read with sub-clause (1) of clause 3 and sub-clause (1) of clause 8 of The Nationalised Banks (Management & Miscellaneous Provisions) Scheme, 1970/1980, the Central Government hereby appoints Shri K. Veera Brahmaji Rao (DoB : 16-05-1959), General Manager, Vijaya Bank as Executive Director, Punjab National Bank, for a

period of five years from the date of his taking over the charge of the post or until further orders, whichever is the earlier.

[F.No. 4/5/2012-BO-I]

**VIJAY MALHOTRA, Under Secy.**

नई दिल्ली, 23 जनवरी, 2014

**का.आ. 417.**—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खंड 3 के उप-खंड (1) और खंड 8 के उप-खंड (1) के साथ पठित, बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970/1980 की धारा 9 की उप-धारा (3) के खंड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, कार्पोरेशन बैंक के महाप्रबंधक श्री बी.के. दिवाकर (जन्म तिथि 17-07-1960), को उनके द्वारा पदभार ग्रहण करने की तारीख से पाँच वर्षों की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, सेंट्रल बैंक ऑफ इंडिया के कार्यपालक निदेशक के रूप में नियुक्त करती है।

[फा. सं. 4/5/2012-बीओ-I]

विजय मल्होत्रा, अवर सचिव

New Delhi, the 23rd January, 2014

**S.O. 417.**—In exercise of the powers conferred by of sub-section (3) of Section 9 of The Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970/1980 read with sub-clause (1) of clause 3 and sub clause (1) of clause 8 of The Nationalised Banks (Management & Miscellaneous Provisions) Scheme, 1970/1980, the Central Government hereby appoints Shri B. K. Divakara (DoB : 17-07-1960), General Manager, Corporation Bank as Executive Director, Central Bank of India, for a period of five years from the date of his taking over the charge of the post or until further orders, whichever is the earlier.

[F.No. 4/5/2012-BO-I]

**VIJAY MALHOTRA, Under Secy.**

नई दिल्ली, 23 जनवरी, 2014

**का.आ. 418.**—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खंड 3 के उप-खंड (1) और खंड 8 के उप-खंड (1) के साथ पठित, बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970/1980 की धारा 9 की उप-धारा (3) के खंड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, देना बैंक के महाप्रबंधक श्री जल करन सिंह खर्ब (जन्म तिथि 12-06-1956), को उनके द्वारा पदभार ग्रहण करने की तारीख से 30-06-2016 अर्थात् उनके द्वारा अधिवर्षिता की आयु प्राप्त कर लेने तक अथवा अगले आदेशों तक, जो भी पहले हो, इलाहाबाद बैंक के कार्यपालक निदेशक के रूप में नियुक्त करती है।

[फा. सं. 4/5/2012-बीओ-I]

विजय मल्होत्रा, अवर सचिव



New Delhi, the 23rd January, 2014

**S.O. 418.**—In exercise of the powers conferred by clause (a) of sub-section (3) of Section 9 of The Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970/1980 read with sub-clause (1) of clause 3 and sub-clause (1) of clause 8 of The Nationalised Banks (Management & Miscellaneous Provisions) Scheme, 1970/1980, the Central Government hereby appoints Shri Jal Karan Singh Kharab (DoB : 12-06-1956), General Manager, Dena Bank as Executive Director, Allahabad Bank from the date of taking over charge of the post, for a period upto 30-06-2016 i.e. the date of his attaining the age of superannuation or until further orders, whichever is the earlier.

[F.No. 4/5/2012-BO-I]

VIJAY MALHOTRA, Under Secy.

नई दिल्ली, 24 जनवरी, 2014

**का.आ. 419.**—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खंड 9 के उप-खंड (1) और (2) के साथ पठित, बैंककारी कंपनी (उपक्रमों का अर्जन और अंतरण) अधिनियम, 1970/1980 की धारा 9 की उप-धारा (3) के खंड (ड.) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक से परामर्श के पश्चात् एतद्वारा, श्री आर. सम्पत कुमार (जन्म तिथि 16-02-1958), विशेष सहायक, इंडियन ओवरसीज बैंक को उनकी नियुक्ति की अधिसूचना की तारीख से तीन वर्ष की अवधि के लिए अथवा ओवरसीज बैंक में उनके कर्मचारी के पद पर बने रहने तक अथवा अगले आदेशों तक, इनमें से जो भी पहले हो, इंडियन ओवरसीज बैंक के निदेशक मण्डल में कर्मकार-कर्मचारी निदेशक के रूप में नियुक्त करती है।

[फा. सं. 6/8/2013-बीओ-I]

मनीष कुमार, अवर सचिव

New Delhi, the 24th January, 2014

**S.O. 419.**—In exercise of the powers conferred by clause (e) of sub-section (3) of Section 9 of The Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970/1980 read with Sub-clause (1) & (2) of Clause 9 of The Nationalised Banks (Management & Miscellaneous Provisions) Scheme, 1970/1980, the Central Government hereby appoints Shri R. Sampath Kumar (DoB : 16-02-1958), Special Assistant, Indian Overseas Bank as Workmen Employee Director on the Board of Directors of Indian Overseas Bank for a period of three years with effect from the date of his taking over the charge of the post or until he ceases to be a Workmen Employee of Indian Overseas Bank or until further orders, whichever is the earliest.

[F.No. 6/8/2013-BO-I]

MANISH KUMAR, Under Secy.

नई दिल्ली, 24 जनवरी, 2014

**का.आ. 420.**—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खंड 3 के उप-खंड (1) के साथ पठित, बैंककारी कंपनी (उपक्रमों का अर्जन और अंतरण) अधिनियम, 1970/1980 की धारा 9 की उप-धारा 3(ज) और (3-क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, श्री गौतम प्रेमनाथ खण्डेलवाल (जन्म तिथि 01-04-1962), को उनकी नियुक्ति की अधिसूचना की तारीख से तीन वर्ष की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, पंजाब नेशनल बैंक के निदेशक मण्डल में अंश-कालिक गैर-सरकारी निदेशक के रूप में नामित करती है।

[फा. सं. 6/27/2013-बीओ-I]

मनीष कुमार, अवर सचिव

New Delhi, the 24th January, 2014

**S.O. 420.**—In exercise of the powers conferred by of sub-section 3 (h) and (3-A) of Section 9 of The Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970/1980 read with sub-clause (1) of clause 3 of The Nationalised Banks (Management & Miscellaneous Provisions) Scheme, 1970/1980, the Central Government hereby nominates Shri Gautam Premnath Khandelwal (DoB : 01-04-1962), as Part-time Non-official Director on the Board of Directors of Punjab National Bank, for a period of three years from the date of notification of his appointment or until further orders, whichever is earlier.

[F.No. 6/27/2013-BO-I]

MANISH KUMAR, Under Secy.

नई दिल्ली, 24 जनवरी, 2014

**का.आ. 421.**—भारतीय स्टेट बैंक (समनुषंगी बैंक) अधिनियम, 1959 (1959 का 38) की धारा 26 की उपधारा 2(क) के साथ पठित धारा 25 की उप-धारा (1) के खण्ड (ग ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक से परामर्श करने के पश्चात् एतद्वारा, स्टेट बैंक ऑफ मैसूर के मुख्य प्रबंधक श्री के. गुरुस्वामी (जन्म तिथि : 01-06-1958) को उनकी नियुक्ति की अधिसूचना की तारीख से तीन वर्षों की अवधि के लिए अथवा स्टेट बैंक ऑफ मैसूर के अधिकारी के पद पर उनके बने रहने तक अथवा अगले आदेशों तक, इनमें से जो भी पहले हो, स्टेट बैंक ऑफ मैसूर के निदेशक मण्डल में अधिकारी कर्मचारी निदेशक के रूप में नियुक्त करती है।

[फा. सं. 3/6/2013-बीओ-I]

मनीष कुमार, अवर सचिव

New Delhi, the 24th January, 2014

**S.O. 421.**—In exercise of the powers conferred by clause (cb) of the sub-section (i) of Section 25 read with sub-section (2A) of Section 26 of the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959), the Central Government, after consultation with the Reserve Bank of

India, hereby appoints Shri K. Guruswamy (DoB : 01-06-1958), Chief Manager, State Bank of Mysore, as Officer Employee Director on the Board of Directors of State Bank of Mysore for, a period of three years from the date of notification of his appointment or till he ceases to be an officer of the State Bank of Mysore or until further orders, whichever is the earliest.

[F.No. 3/6/2013-BO-I]

MANISH KUMAR, Under Secy.

नई दिल्ली, 24 जनवरी, 2014

**का.आ. 422.**—राष्ट्रीयकृत बैंक (प्रबंध और प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खंड 3 के उप-खंड (1) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन और अंतरण) अधिनियम, 1970/1980 की धारा 9 की उप-धारा 3(ज) और (3-क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा श्रीमती रेणुका मुटू (जन्म तिथि : 15.09.1950) को उनकी नियुक्ति की अधिसूचना की तारीख से तीन वर्ष की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, युनाइटेड बैंक ऑफ इंडिया के निदेशक मण्डल में अंश-कालिक गैर-सरकारी निदेशक के रूप में नामित करती है।

[फा. सं. 6/49/2013-बीओ-I]

मनीष कुमार, अवर सचिव

New Delhi, the 24th January, 2014

**S.O. 422.**—In exercise of the powers conferred by sub-section 3(h) and (3-A) of Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980 read with sub-clause (1) of clause 3 of the Nationalized Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, the Central Government hereby nominates Smt. Renuka Muttoo (DoB : 15-09-1950) as Part-time Non-official Director on the Board of Directors of United Bank of India for a period of three years, from the date of notification of her appointment or until further orders, whichever is earlier.

[F.No. 6/49/2013-BO-I]

MANISH KUMAR, Under Secy.

### पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 11 दिसम्बर, 2013

**का.आ. 423.**—तेल उद्योग (विकास) अधिनियम, 1974 (1974 का 47) की धारा 3 की उप-धारा (3) (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा, श्रीमती अंजुली चिब दुग्गल, अपर सचिव (व्यय), वित्त मंत्रालय को दिनांक 15-11-2013 से 14-11-2015, या अगले आदेश होने तक, तेल उद्योग विकास बोर्ड के सदस्य के रूप में पुनर्नियुक्त करती है।

[फा. सं. जी-35012/2/91-वित्त-II]

नोवस किन्दो, अवर सचिव

### MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 11th December, 2013

**S.O. 423.**—In exercise of the powers conferred by sub-section (3)(b) of Section 3 of the Oil Industry (Development) Act, 1974 (47 of 1974), the Central Government hereby re-appoints Smt. Anjuly Chib Duggal, Addl. Secretary (Exp.), Ministry of Finance, as a member of the Oil Industry Development Board with effect from 15-11-2013 to 14-11-2015, or until further orders.

[F.No. G-35012/2/91-Fin. II]

NOAS KINDO, Under Secy.

नई दिल्ली, 11 दिसम्बर, 2013

**का.आ. 424.**—तेल उद्योग (विकास) अधिनियम, 1974 (1974 का 47) की धारा 3 की उप-धारा (3) (ग) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार निम्नलिखित अधिकारियों को उनके नाम के सामने दर्शायी गई अवधि के लिए या अगले आदेश होने तक, जो भी पहले हो, तेल उद्योग विकास बोर्ड के सदस्य के रूप में, एतद्वारा नियुक्त/पुनर्नियुक्त करती है :—

| क्रम सं. | अधिकारी का नाम   | से         | तक         |
|----------|--|------------|------------|
| 1.       | श्री सुधीर वासुदेवा, अध्यक्ष एवं प्रबंध निदेशक ओएनजीसी | 03-10-2013 | 28-02-2014 |
| 2.       | श्री बी. सी. त्रिपाठी, अध्यक्ष एवं प्रबंध निदेशक गेल   | 01-08-2013 | 31-07-2015 |
| 3.       | श्री एस. वरदराजन, अध्यक्ष एवं प्रबंध निदेशक बीपीसीएल   | 01-10-2013 | 30-09-2015 |

[फा. सं. जी-35012/2/91-वित्त-II]

नोवस किन्दो, अवर सचिव

New Delhi, the 11th December, 2013

**S.O. 424.**—In exercise of the powers conferred by sub-section (3)(c) of Section 3 of the Oil Industry (Development) Act, 1974 (47 of 1974), the Central Government hereby appoints/re-appoints the following officers as a member of the Oil Industry Development Board for the period shown against their names or until further orders, whichever is earlier :

| S. No. | Name of the officer             | From       | To         |
|--------|---------------------------------|------------|------------|
| 1.     | Shri Sudhir Vasudeva, CMD, ONGC | 03-10-2013 | 28-02-2014 |
| 2.     | Shri B. C. Tripathi, CMD, GAIL  | 01-08-2013 | 31-07-2015 |
| 3.     | Shri S. Varadarajan, CMD, BPCL  | 01-10-2013 | 30-09-2015 |

[F.No. G-35012/2/91-Fin. II]

NOAS KINDO, Under Secy.

## उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय

( उपभोक्ता मामले विभाग )

( भारतीय मानक ब्यूरो )

नई दिल्ली, 3 जनवरी, 2014

**का.आ. 425.**—भारतीय मानक ब्यूरो नियम 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिन भारतीय मानकों के विवरण नीचे अनुसूची में दिए गए हैं वे स्थापित हो गये हैं ।

## अनुसूची

| क्रम संख्या | स्थापित भारतीय मानक (कों) की संख्या वर्ष और शीर्षक  | स्थापित तिथि     | भारतीय मानक (कों) जो कि रद्द होने हैं, अगर है, की संख्या वर्ष और शीर्षक   | रद्द होने की तिथि |
|-------------|---|------------------|---|-------------------|
| (1)         | (2)   | (3)              | (4)   | (5)               |
| 1.          | आई एस 133: 2013 इनैमल, भीतरी-(क)अधलेपन, (ख) परिसज्जा-विशिष्ट भाग 1 घरेलू और सजावटी प्रयोग के लिए (पांचवां पुनरीक्षण)  | 31 अक्टूबर, 2013 | आईएस 133: 2004 इनैमल, भीतरी-(क) अधलेपन, (ख) परिसज्जा विशिष्ट भाग 1 घरेलू और सजावटी प्रयोग के लिए (चौथा पुनरीक्षण) | 31 मार्च, 2014    |
| 2.          | आई एस 427: 2013 अपेक्षित रंग के शुष्क डिसटेम्पर - विशिष्ट (तीसरा पुनरीक्षण)   | 31 अक्टूबर, 2013 | आईएस 427: 2005 अपेक्षित रंग के शुष्क डिसटेम्पर -विशिष्ट (दूसरा पुनरीक्षण)   | 31 मार्च, 2014    |
| 3.          | आई एस 428: 2013 धोने योग्य डिसटेम्पर -विशिष्ट (तीसरा पुनरीक्षण)   | 31 अक्टूबर, 2013 | आईएस 428: 2000 धोने योग्य डिसटेम्पर -विशिष्ट (दूसरा पुनरीक्षण)  | 31 मार्च, 2014    |
| 4.          | आई एस 2339: 2013 सामान्य प्रयोजनों के लिए एल्यूमीनियम रंग रोगन (पहला पुनरीक्षण)   | 31 अक्टूबर, 2013 | आईएस 2339: 1963 सामान्य प्रयोजनों के लिए एल्यूमीनियम रंग रोगन   | 31 मार्च, 2014    |
| 5.          | आई एस 2932: 2013 इनैमल, संश्लिष्ट, बाहरी (क) अधलेपन (ख) परिसज्जा-विशिष्ट भाग 1 घरेलू और सजावटी प्रयोग के लिए (चौथा पुनरीक्षण)                               | 31 अक्टूबर, 2013 | आईएस 2932: 2003 इनैमल, संश्लिष्ट, बाहरी, (क)अधलेपन (ख) परिसज्जा-विशिष्ट (तीसरा पुनरीक्षण)                         | 31 मार्च, 2014    |
| 6.          | आई एस 2933: 2013 इनैमल, बाहरी के लिए विशिष्ट (क) अधलेपन, (ख) परिसज्जा - विशिष्ट भाग 1 घरेलू और सजावटी प्रयोग के लिए (दूसरा पुनरीक्षण)                       | 31 अक्टूबर, 2013 | आईएस 2933: 1975 इनैमल, बाहरी के लिए विशिष्ट (क) अधलेपन, (ख)परिसज्जा (पहला पुनरीक्षण)                              | 31 मार्च, 2014    |
| 7.          | आई एस 5410: 2013 सीमेंट रंग रोगन -विशिष्ट (दूसरा पुनरीक्षण)   | 31 अक्टूबर, 2013 | आईएस 5410: 1992 सीमेंट रंग रोगन-विशिष्ट (पहला पुनरीक्षण)  | 31 मार्च, 2014    |
| 8.          | आई एस 12744: 2013 रेड आक्साइड-जस्ता फास्फेट आधारित पहले करने के वायु शुष्कन तैयार मिश्रित रोगन-विशिष्ट भाग 1 घरेलू और सजावटी प्रयोग के लिए (पहला पुनरीक्षण) | 31 अक्टूबर, 2013 | आईएस 12744: 1989 रेड आक्साइड-जस्ता फास्फेट आधारित पहले करने के वायु शुष्कन तैयार मिश्रित रोगन-विशिष्ट             | 31 मार्च, 2014    |

| (1) | (2)   | (3)              | (4)  | (5)            |
|-----|---|------------------|--|----------------|
| 9.  | आई एस 15489: 2013 रंग रोगन, प्लास्टिक इमल्शन-विशिष्टि<br>(पहला पुनरीक्षण)   | 31 अक्टूबर, 2013 | आईएस 15489: 2004 रंग रोगन, प्लास्टिक इमल्शन -विशिष्टि        | 31 मार्च, 2014 |
| 10. | आई एस 252: 2013 कास्टिक सोडा -विशिष्टि<br>(चौथा पुनरीक्षण)                  | 31 अक्टूबर, 2013 | आईएस 252: 1991 कास्टिक सोडा-विशिष्टि<br>(तीसरा पुनरीक्षण)    | 31 मार्च, 2014 |
| 11. | आई एस 7742: 2013 सिथैटिक इमल्शन रेजिन बाइंडरा -विशिष्टि<br>(पहला पुनरीक्षण) | 31 दिसंबर, 2013  | आईएस 7742: 1975 सिथैटिक इमल्शन रेजिन बाइंडरा के लिए विशिष्टि | 03 जनवरी, 2014 |

इस भारतीय मानक की प्रतियाँ भारतीय मानक ब्यूरो, मानक भवन, 9 बहादुरशाह जफर मार्ग, नई दिल्ली-110 002 क्षेत्रीय कार्यालयों: नई दिल्ली, कोलकता, चण्डीगढ़, चेन्नई, मुम्बई, तथा शाखा कार्यालयों: अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरुवनन्तापुरम में ब्रिकी हेतु उपलब्ध हैं। भारतीय मानकों को <http://www.standardsbis.in> द्वारा इंटरनेट पर खरीदा जा सकता है।

[संदर्भ सं. पीयूबी/एसटीडी-1/जीएन]

कला माधवी वारियर, निदेशक (विदेशी भाषा एवं प्रकाशन)

# MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION

(Department of Consumer Affairs)

(BUREAU OF INDIAN STANDARDS)

New Delhi, the 3rd January, 2014

**S.O. 425.**—In pursuance of Clause (b) of sub-rule (1) of Rules 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the second column of Schedule hereto annexed has been established on the date indicated against it in third column. The particulars of the standards, if any, which are given in the fourth column shall also remain in force concurrently till they are cancelled on the date indicated against them in the fifth column.

## SCHEDULE

| Sl. No. | No. & Year of the Indian Standards Established   | Date of Established | No. & Year of the Indian Standards to be cancelled, if any   | Date of Cancellation |
|---------|--|---------------------|--|----------------------|
| (1)     | (2)  | (3)                 | (4)  | (5)                  |
| 1.      | IS 133: 2013 Enamel, Interior, (A) Undercoating (B) Finishing—Specification Part 1 For Household and Decorative Purposes (Fourth Revision) | 31 October 2013     | IS 133: 1991 Enamel, Interior: (A) Undercoating (B) Finishing—Specification Part 1 For Household and Decorative Purposes (Fourth Revision) | 31 March 2014        |
| 2.      | IS 427: 2013 Distemper, Dry Colour As Required - Specification (Third Revision)  | 31 October 2013     | IS 427: 2005 Distemper, Dry, Colour As Required —Specification (Second Revision)   | 31 March 2014        |
| 3.      | IS 428: 2013 Washable Distemper- Specification (Third Revision)  | 31 October 2013     | IS 428: 2000 Washable Distemper- Specification (Second Revision)   | 31 March 2014        |



| (1) | (2)  | (3)             | (4)  | (5)             |
|-----|--|-----------------|--|-----------------|
| 4.  | IS 2339 : 2013<br>Specification for<br>Aluminium Paints For<br>General Purposes<br>(First Revision)  | 31 October 2013 | IS 2339 : 1963<br>Specification for<br>Aluminium Paints For<br>General Purposes                                | 31 March 2014   |
| 5.  | IS 2932 (Part 1) : 2013<br>Enamel, Synthetic,<br>Exterior ; (a) Under<br>Coating (b) Finishing-<br>Specification (Fourth<br>Revision)  | 31 October 2013 | IS 2932 : 2003<br>Enamel, Synthetic,<br>Exterior ; (a) Under<br>Coating (b) Finishing-<br>(Third Revision)     | 31 March 2014   |
| 6.  | IS 2933 (Part 1) : 2013<br>Specification for<br>Enamel, Exterior ; (a)<br>Under Coating (b)<br>Finishing Part 1 : For<br>Domestic and Decorative<br>Application<br>(First Revision)            | 31 October 2013 | IS 2933 : 1975<br>Specification for<br>Enamel, Exterior,<br>(a) Under Coating<br>(b) Finishing                 | 31 March 2014   |
| 7.  | IS 5410 : 2013 Cement<br>Paint- Specification<br>(Second Revision)   | 31 October 2013 | IS 5410 : 1992<br>Cement Paint-Specification<br>(First Revision)   | 31 March 2014   |
| 8.  | IS 12744 (Part 1) : 2013<br>Ready mixed Paint,<br>Airdrying, Red-oxide<br>Zinc Phosphate,<br>Framing- Specification<br>Part 1 : For Domestic<br>and Decorative Application<br>(First Revision) | 31 October 2013 | IS 12744 : 1989<br>Ready mixed Paint,<br>Airdrying, Red-<br>oxide Zinc<br>Phosphate, Framing<br>-Specification | 03 January 2014 |
| 9.  | IS 15489 : 2013 Paint,<br>Plastic Emulsion-<br>Specification<br>(First Revision)   | 31 October 2013 | IS 15489 : 2004 Paint,<br>Plastic Emulsion-<br>Specification   | 31 March 2014   |
| 10. | IS 252 : 2013 Caustic<br>Soda- Specification<br>(Forth Revision)   | 31 October 2013 | IS 252 : 1991<br>Caustic Soda, Pure<br>& Technical-<br>Specification<br>(Third Revision)                       | 31 March 2014   |
| 11. | IS 7742 : 2013<br>Synthetic Emulsion<br>Resin Binder<br>Specification  | 31 October 2013 | IS 7742 : 1975<br>Synthetic Emulsion<br>Resin Binder-<br>Specification   | 03 January 2014 |

Copies of these standards are available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices: Kolkatta, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Kochi.

[Ref. No. PUB/STD-1/GN]

KALAM VARIAR, Director (Foreign Languages & Publication)

नई दिल्ली, 10 जनवरी, 2014

**का.आ. 426.**—भारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988 के नियम 4 के उप-नियम (5) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिन लाइसेंसों के विवरण नीचे अनुसूची में दिए गए हैं, वे स्वीकृत कर दिए गए हैं :—

**अनुसूची**

| क्रम सं. | लाइसेंस संख्या | स्वीकृत करने की तिथि, माह/वर्ष | लाइसेंसधारी का नाम व पता   | भारतीय मानक का शीर्षक  | भा. मा. संख्या | भाग | अनु वर्ष |
|----------|----------------|--------------------------------|--|--|----------------|-----|----------|
| (1)      | (2)            | (3)                            | (4)  | (5)  | (6)            | (7) | (8) (9)  |
| 1.       | 3936779        | 02-04-2013                     | नेशनल इंडस्ट्रीज, पंचवटी, एन एच नंबर 59, अहमदाबाद रोड, खेडा, एट काठलाल-387630  | प्लाईवुड फार जनरल परपस   | 303            | -   | - 1989   |
| 2.       | 3936476        | 04-04-2013                     | गोपाल आयरन तथा स्टील कम्पनी (गुज) लिमिटेड, प्लॉट नंबर 1401/12, जी आई डी सी, केराला इंडस्ट्रियल एस्टेट, एन एच नंबर 8 ए, ता बावला, अहमदाबाद-382220 | हालो स्टील सैक्शन फार स्टकचर्ल यूस                                 | 4923           | -   | - 1997   |
| 3.       | 3936577        | 05-04-2013                     | नारायणराव के पारेख, शॉप नंबर 2, मयूनिस्पैलिटी मार्केट, वापी टाउन पोलिस स्टेशन के पास, मेन रोड, नेहरू स्ट्रीट, वापी, वलसाद-396191                 | स्वर्ण तथा स्वर्ण धातुओं के आभूषणों शिल्पकारी शुद्धता एवं मुहरांकन | 1417           | -   | - 1999   |
| 4.       | 3936678        | 05-04-2013                     | चौकसी बच्चूभाई प्रीतमलाल, चोकसी बाजार, वडोदरा पादरा-391440   | स्वर्ण तथा स्वर्ण धातुओं के आभूषणों शिल्पकारी शुद्धता एवं मुहरांकन | 1417           | -   | - 1999   |
| 5.       | 3942269        | 05-04-2013                     | स्वास्तिक फ़ैल्ट इंडस्ट्रीज, प्लॉट नंबर 187 तथा 182, जी आई डी सी, नंदेसरी, वडोदरा-390005   | बिटूमेन फ़ैल्ट फार वाटर प्रुफिंग तथा डैप प्रुफिंग                  | 1322           | -   | - 1993   |
| 6.       | 3938581        | 08-04-2013                     | स्पेक्ट्रम केबल टेक अंबर गम इण्डस्ट्रिज के पास, मारीया पार्क केनल रोड, नारोल, अहमदाबाद-382405  | पी वी सी इंसूलेटिड केबल  | 694            | -   | - 1990   |
| 7.       | 3937680        | 09-04-2013                     | एस के इण्डस्ट्रिज, एल-204, जीआईडीसी एस्टेट, भिक्षुक गृह के पास, ओढव, अहमदाबाद-382415   | पी वी सी इंसूलेटिड केबल  | 694            | -   | - 1990   |

| (1) | (2)     | (3)        | (4)  | (5)   | (6)   | (7) | (8) | (9)  |
|-----|---------|------------|--|---|-------|-----|-----|------|
| 8.  | 3937882 | 09-04-2013 | एरो प्लास्ट एन्टरप्राइज<br>प्लॉट नं. 2, गांधी एस्टेट,<br>आसोपालव होटल के पीछे,<br>यस टाटा मोटर सर्विस स्टेशन<br>के पास, नारोल,<br>जिला : अहमदाबाद-382405                     | अनप्लास्टिसाईड<br>पी वी सी पाईप्स<br>फार पोटेबल वाटर<br>सपलाईस              | 4985  | -   | -   | 2000 |
| 9.  | 3938480 | 12-04-2013 | सुप्रिम मिनरल प्रोडक्ट्स,<br>C/87, जवेरी इंडस्ट्रीयल<br>एस्टेट, कठवाडा,<br>तालुका : दसकाई,<br>जिला : अहमदाबाद-382430   | पैकेजबंद पेयजल<br>( अदर दैन पैकेज्ड<br>नेचुरल मिनरल<br>वाटर)                | 14543 | -   | -   | 2004 |
| 10. | 3939078 | 15-04-2013 | वोल्ट-टेक्स केबल इण्डस्ट्रिज<br>37, नरनारायन एस्टेट,<br>रायपुर मिल के पास, सरसपुर<br>अहमदाबाद  | पी वी सी इंसूलेटिड<br>केबल  | 694   | -   | -   | 1990 |
| 11. | 3939179 | 15-04-2013 | अभीषेक ज्वेलर्स,<br>5, संजय कोम्पलेक्स,<br>सयाजी रोड, लिबर्टी<br>बस स्टोप,<br>नवसारी-396445  | स्वर्ण तथा स्वर्ण<br>धातुओं के आभूषणों<br>शिल्पकारी शुद्धता<br>एवं मुहरांकन | 1417  | -   | -   | 1999 |
| 12. | 3941166 | 15-04-2013 | एडीएस वाटर,<br>110, महोदय एसटेट,<br>केनाल के पास,<br>सी टी एम, एट गाँव<br>अहमदाबाद-380026  | पैकेजबंद पेयजल<br>( अदर दैन पैकेज्ड<br>नेचुरल मिनरल<br>वाटर)                | 14543 | -   | -   | 2004 |
| 13. | 3939886 | 17-04-2013 | जे के वाधवा एण्ड कंपनी<br>प्लाट नं. 2920/A,<br>फेस 1 जीआईडीसी, वापी,<br>जिला : वलसाड-396195  | एल्यूमिनो फ़ैरिक  | 299   | -   | -   | 2012 |
| 14. | 3940063 | 18-04-2013 | विशाल फायर प्रोटेक्शन<br>इक्विपमेंट्स, प्लाट नंबर 858/1,<br>जी आई डी सी, मकरपुरा,<br>वडोदरा-390010   | लैंडिंग वाल्व्स   | 5290  | -   | -   | 1993 |
| 15. | 3941368 | 23-04-2013 | इंडियन फुड कार्पोरेशन,<br>शैड नंबर 1 तथा 2,<br>प्लाट नंबर डी 64,<br>डायमंड पार्क, नरोडा,<br>जी आई डी सी, नाना<br>चिलोडा क्रास रोड के पास<br>एन एच नंबर 8,<br>अहमदाबाद-382330 | पैकेजबंद पेयजल<br>( अदर दैन पैकेज्ड<br>नेचुरल मिनरल<br>वाटर)                | 14543 | -   | -   | 2004 |

| (1) | (2)     | (3)        | (4)  | (5)  | (6)   | (7) | (8) | (9)  |
|-----|---------|------------|--|--|-------|-----|-----|------|
| 16. | 3943978 | 26-04-2013 | जेनसन केबल्स इंडिया प्रा.<br>लिमिटेड, सर्वे नंबर 16,<br>प्लॉट नंबर 16 ए तथा बी,<br>गाँव चंदारडा, ता कडी,<br>डि मेहसाना-382718          | क्रासलिंग्ड<br>पालथिलिन<br>इंसुलेटिड पीवीसी<br>शीथड केबल | 7098  | 1   | -   | 1988 |
| 17. | 3942370 | 30-04-2013 | राज प्लास्टिक इन्डस्ट्रीज<br>प्लॉट नं. 426, रोड नं. 10,<br>जी आई डी सी, कठवाडा,<br>गाँव : कान्हा, तालुका : दशक्रोई,<br>जिला : अहमदाबाद | ईरीगेशन इक्वूपमेंट-<br>स्टेनर टाईप फिल्टर्स              | 12785 | -   | -   | 1994 |

[सं. सीएमडी/13:11]

डॉ. एस. एल. पालकर, वैज्ञानिक 'एफ' एवं प्रमुख

New Delhi, the 10th January, 2014

**S.O. 426.**—In pursuance of sub-regulation (5) of the Regulation 4 of the Bureau of Indian Standards (Certification) Regulations 1988, of the Bureau of Indian Standards, hereby notifies the grant of licences particulars of which are given in the following schedule :—

**SCHEDULE**

| Sl. No. | Licences No. | Grant Date | Name and Address of the Party  | Title of the Standard  | IS No. | Part | Sec. | Year |
|---------|--------------|------------|--|--|--------|------|------|------|
| (1)     | (2)          | (3)        | (4)  | (5)  | (6)    | (7)  | (8)  | (9)  |
| 1.      | 3936779      | 02-04-2013 | National Industries,<br>Panchawati, N. H. No. 59,<br>Ahmedabad Road,<br>Kheda<br>At : Kathlal-387630   | Plywood for<br>general purposes  | 303    | -    | -    | 1989 |
| 2.      | 3936476      | 04-04-2013 | Gopal Iron & Steels Co.<br>(GUJ) Ltd., Plot No.1401/<br>2, G. I. D. C. Kerala<br>Industrial Estate,<br>N. H. No. 8 A Taluka,<br>Bavla,<br>Ahmedabad-382220 | Hollow steel<br>sections for<br>structural use                             | 4923   | -    | -    | 1997 |
| 3.      | 3936577      | 05-04-2013 | Narayanrao K. Parekh<br>Shop No. 2, Municipality<br>Market, Near Vapi Town<br>Police Station, Main Road<br>Nehru Street, Vapi,<br>Valsad-396191            | Gold and gold<br>alloys, Jewellery/<br>artefacts—fineness<br>and marking - | 1417   | -    | -    | 1999 |
| 4.      | 3936678      | 05-04-2013 | Choksi Bachubhai<br>Pritamlal, Choksi Bazar,<br>Vadodara,<br>Padra-391440  | Gold and gold<br>alloys, Jewellery/<br>artefacts—fineness<br>and marking   | 1417   | -    | -    | 1999 |
| 5.      | 3942269      | 05-04-2013 | Swastik Felt Industries<br>Plot No. 187 & 182,<br>G. I. D. C., Nandesari,<br>Vadodara-390005   | Bitumen felts for<br>water proofing and<br>damp-proofing                   | 1322   | -    | -    | 1993 |



| (1) | (2)     | (3)        | (4)   | (5)  | (6)   | (7) | (8) | (9)  |
|-----|---------|------------|---|--|-------|-----|-----|------|
| 6.  | 3938581 | 08-04-2013 | Spectrum Cable Tech<br>Near Amber Gum<br>Industries, Near Maria<br>Park, Canal Road<br>Ahmedabad,<br>Narol-382405                                       | PVC insulated  | 694   | -   | -   | 1990 |
| 7.  | 3937680 | 09-04-2013 | S. K. Industries<br>L-204 GIDC Estate<br>Near Bhikshuk Gruh,<br>Ahmedabad,<br>Odhav-382415  | PVC insulated<br>cables  | 694   | -   | -   | 1990 |
| 8.  | 3937882 | 09-04-2013 | Aoplast Enterprise<br>Plot No. 2, Gandhi Estate<br>Behind Asopalav Hotel,<br>Near Yes Tata Motor<br>Service Station<br>Ahmedabad<br>Narol-382405        | Unplasticized<br>pvc pipes for<br>potable water<br>supplies                    | 4985  | -   | -   | 2000 |
| 9.  | 3938480 | 12-04-2012 | Supreme Mineral<br>Products, C/87, Zaveri<br>Industrial Estate,<br>Kathwada, Ahmedabad<br>Tal : Dascroi-382430  | Packaged drinking<br>water (other than<br>packaged natural<br>mineral water) - | 14543 | -   | -   | 2004 |
| 10. | 3939078 | 15-04-2013 | VOLT-TEX Cableis<br>Industries, 37, Narayan<br>Estate, Near Raipur Mill<br>Saraspur, Ahmedabad  | PVC insulated<br>cables  | 694   | -   | -   | 1990 |
| 11. | 3939179 | 15-04-2013 | Abhishek Jewellers<br>5, Sanjay Copmplex,<br>Sayaji Oad Library Bus<br>Stop, Navsari-396445   | Gold and gold<br>alloys, Jewellery/<br>artefacts—fineness<br>and marking -     | 1417  | -   | -   | 1999 |
| 12. | 3941166 | 15-04-2013 | ADS Water<br>110, Mahadev Estate,<br>On Canal, C T M,<br>At Village<br>Ahmedabad-380026   | Packaged drinking<br>water (other than<br>packaged natural<br>mineral water)   | 14543 | -   | -   | 2004 |
| 13. | 3939886 | 17-04-2013 | J. K. Wadhwa and<br>Company, Plot No. 2920/A,<br>Phase 1, GIDC Vapi<br>Valsad-396195  | Alumino-ferric   | 299   | -   | -   | 2012 |
| 14. | 3940063 | 18-04-2013 | Vishal Fire Protection<br>Equipments, Plot No.<br>858/1, GIDC, Makarpura,<br>Vododara-390010  | Landing valves   | 5290  | -   | -   | 1993 |
| 15. | 3941368 | 23-04-2013 | Indian Food Corporation<br>Shed No. 1 & 2, Plot No.<br>D 64, Diamond Park,<br>Naroda, GIDC, Near Nana<br>Chiloda Cross Road, N H 8,<br>Ahmedabad-382330 | Packafed drinking<br>water (other than<br>packaged natural<br>mineral water)   | 14543 | -   | -   | 2004 |

| (1) | (2)     | (3)        | (4)  | (5)  | (6)   | (7) | (8) | (9)  |
|-----|---------|------------|--|--|-------|-----|-----|------|
| 16. | 3943978 | 26-04-2013 | Jainson Cables India Pvt Ltd. Survey No. 16, Plot No. 16 A & B, Village - Chandarda, Taluka - Kadi Dist Mehsana - 382718 | Crosslinked polyethylene insulated pvc Sheathed cables | 7098  | 1   | -   | 1988 |
| 17. | 3942370 | 30-04-2013 | Raj Plastic Industries Plot No. 426, Road, No. 10, Phase-2 GIDC, Kathwada Village : Kanbha Ahmedabad, Tal : Daskroi      | Irrigation equipment-strainer-type filters             | 12785 | -   | -   | 1994 |

[No. CMD/13 : 11 ]

Dr. S. L. PALKAR, Scientist 'F' &amp; Head

नई दिल्ली, 10 जनवरी, 2014

**का.आ. 427.**—भारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988 के विनियम 5 के उप-विनियम (6) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि निम्न विवरण वाले लाइसेंसों को उनके आगे दर्शायी गई तारीख से रद्द/स्थगित कर दिया गया है :-

**अनुसूची**

| क्र. सं. | लाइसेंस संख्या सीएम/एल | लाइसेंसधारी का नाम व पता  | लाइसेंस के अन्तर्गत वस्तु/प्रक्रम सम्बद्ध भारतीय मानक का शीर्षक       | रद्द करने की तिथि |
|----------|------------------------|---|---|-------------------|
| (1)      | (2)                    | (3)   | (4)   | (5)               |
| 1.       | 3749174                | एसीएस बिबरेजिस, करीमबेली स्टेशन रोड, मोहन फाटक के पास, वालवाडा जिला : वलसाड-396105            | पैकेजबंद पेयजल ( अदर दैन पैकेजड नेचुरल मिनरल वाटर) आई एस 14543 : 2004 | 15-04-2013        |
| 2.       | 7523774                | लुबी इलेक्ट्रीकल लिमिटेड कल्याण मिल के सामने, नरोडा रोड, जिला : अहमदाबाद                      | सबमर्सिबल पम्पसैट आई एस 8034 : 2002                                   | 18-04-2013        |
| 3.       | 7551476                | वुड तथा पेपर इंडस्ट्रीज, एट तथा पोस्ट बाजवा, बाजवा रेलवे स्टेशन के पास, वडोदरा-391310         | वुडन फलश डोर शटर्स (सालिड कोर टाईप) आई एस 2202: पार्ट 1 : 1999        | 18-04-2013        |
| 4.       | 3736367                | गणपति वुड प्लाई इंडस्ट्रीज, प्लॉट नं. 7, सर्वे नं. 276, गाँव धरमपुरा, त. खेडा-387560          | वुडन फलश डोर शटर्स (सालिड कोर टाईप) आई एस 2202: पार्ट 1 : 1999        | 18-04-2013        |
| 5.       | 1688170                | वैशाली इलेक्ट्रिकल्स 115-बी विंग, राधाकृष्णा फ्लेट, अकोटा गार्डन के पास, जिला : वडोदरा-390020 | पी वी सी इंस्कुलेटिड केबल आई एस 694 : 1990                            | 22-04-2013        |

| (1) | (2)     | (3)  | (4)  | (5)        |
|-----|---------|--|--|------------|
| 6.  | 1726253 | वैशाली इलेक्ट्रिकल्स<br>115-बी विंग, राधाकृष्णा फ्लैट,<br>अकोटा गार्डन के पास,<br>जिला : वडोदरा-390020 | पी वी सी इंसूलेटिड केबल<br>(हैवी ड्यूटी) इलेक्ट्रिक केबल<br>आई एस 1554: (पार्ट 1) : 1999 | 22-04-2013 |

[सं. सीएमडी/13:13]

डॉ. एस. एल. पालकर, वैज्ञानिक 'एफ' एवं प्रमुख

New Delhi, the 10th January, 2014

**S.O. 427.**—In pursuance of sub-regulation (6) of the Regulation 5 of the Bureau of Indian Standards (Certification) Regulations 1988, of the Bureau of Indian Standards, hereby notifies that the licences particulars of which are given below have been cancelled with effect from the date indicated against each :—

**SCHEDULE**

| Sl. No. | Licences<br>No.<br>CML- | Name and Address of the<br>Licensee   | Article/Process with relevant Indian<br>Standards covered by the licence<br>cancelled           | Date of<br>Cancellation |
|---------|-------------------------|---|---|-------------------------|
| (1)     | (2)                     | (3)   | (4)   | (5)                     |
| 1.      | 3749174                 | ACS Beverages<br>Survey No. 24/15, Karembele<br>Station Road, Near Mohan<br>Fatak, Valvada,<br>Distt : Valsad-396105                  | Packaged drinking<br>water (other than<br>packaged natural<br>mineral water)<br>IS 14543 : 2004 | 15-04-2013              |
| 2.      | 7523774                 | Lubi Electricals Ltd.<br>Near Kalyan Mill Naroda Road,<br>Ahmedabad-380025  | Submersible pumpsets<br>IS 8034 : 2002  | 18-04-2013              |
| 3.      | 7551476                 | Wood and Paper Industries<br>At & Post Bajwa, Near<br>Bajwa Railway Station,<br>Vadodara, Bajwa-391310                                | Wooden flush door<br>Shutters (solid core type)<br>IS 2202 : Part 1 : 1999                      | 18-04-2013              |
| 4.      | 3736367                 | Ganpati Wood Ply Industries<br>Plot No. 7, Survey No. 276,<br>Village Dharmapura (Naika),<br>TA & Dist Kheda,<br>Distt : Kheda-387560 | Wooden flush door<br>Shutters (solid core type)<br>IS 2202 : Part 1 : 1999                      | 18-04-2013              |
| 5.      | 1688170                 | Vaishali Electricals<br>115-B Wing, Radha Krishna<br>Flat, Near Akota Garden,<br>Vadodara<br>Distt : Panchamahar-390020               | PVC Insulated Cables<br>IS 694 : 1990   | 22-04-2013              |
| 6.      | 1726253                 | Vaishali Electricals<br>115-B Wing, Radha Krishna<br>Flat, Near Akota Garden,<br>Vadodara<br>Distt : Panchamahar-390020               | PVC Insulated (Heavy<br>Duty) Electric Cables<br>IS 1554 (Part 1) : 1999                        | 22-04-2013              |

[No. CMD/13:13]

Dr. S. L. PALKAR, Scientist 'F' &amp; Head

नई दिल्ली, 10 जनवरी, 2014

**का.आ. 428.**—भारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988 के नियम 4 के उप-नियम (5) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिन लाइसेंसों के विवरण नीचे अनुसूची में दिए गए हैं, वे स्वीकृत कर दिए गए हैं :—

**अनुसूची**

| क्रम सं. | लाइसेंस संख्या | स्वीकृत करने की तिथि वर्ष/माह | लाइसेंसधारी का नाम व पता   | भारतीय मानक का शीर्षक   | भा. मा. संख्या | भाग | अनु वर्ष |
|----------|----------------|-------------------------------|--|---|----------------|-----|----------|
| (1)      | (2)            | (3)                           | (4)  | (5)   | (6)            | (7) | (8) (9)  |
| 1.       | 3943170        | 02-05-2013                    | विशाल इस्पात, सर्वे नंबर 38/2 पी, 39/4, 5 तथा 6, 4/1, 2 तथा 3 गॉव मोराई, ता. पाराडी, वलसाद-396191  | हाई स्ट्रेंथ डिफामर्ड स्टील बार तथा वायर फार कांक्रीट रेनिफोर्समेंट                                       | 1786           | -   | - 2008   |
| 2.       | 3944778        | 08-05-2013                    | कोठारी वैलनैस, प्लॉट नंबर 40, महागुजरात इंडस्ट्रियल एसटेट, विनायक एसटेट, के सामने, फार्मा लैब के पास, सरखेज बावला रोड, एन एच नंबर 8, मोरैया, अहमदाबाद ता. सानंद-382213 | पैकेजबंद पेयजल (अदर दैन पैकेजड नेचुरल मिनरल वाटर)   | 14543          | -   | - 2004   |
| 3.       | 3945881        | 08-05-2013                    | अश्विनी स्टील प्रा. लिमिटेड, 2 के एम स्टोन, बावला सानंद हाइवे, गॉव लोडरियाल बावला, अहमदाबाद-382220   | कार्बन स्टील कास्ट बिलेट इनगोटस, बिलेटस, ब्लूमस तथा स्लेबस फार रिरोलिंग इंटू स्टील फार जनरल स्टकचर्ल परपस | 2830           | -   | - 2012   |
| 4.       | 3945376        | 09-05-2013                    | अस्टमंगल, 101, श्री वीरकला काम्पलैक्स, डेडका की पोल के सामने, एमजी हवेली रोड, मानेक चौक, अहमदाबाद  | स्वर्ण तथा स्वर्ण धातुओं के आभूषणों शिल्पकारी शुद्धता एवं मुहरांकन  | 1417           | -   | - 1999   |
| 5.       | 3945477        | 09-05-2013                    | हाई फेशन ज्वैलर्स 6/860 छापूरिया शेरी, महिंदरपुरा, सूरत-395003   | स्वर्ण तथा स्वर्ण धातुओं के आभूषणों शिल्पकारी शुद्धता एवं मुहरांकन  | 1417           | -   | - 1999   |
| 6.       | 3945578        | 10-05-2013                    | सोनी संजय कुमार मनुभाई “गोल्ड हाउस”, खेतरपाल नी पोल, मानेक चौक, अहमदाबाद   | स्वर्ण तथा स्वर्ण धातुओं के आभूषणों शिल्पकारी शुद्धता एवं मुहरांकन  | 1417           | -   | - 1999   |
| 7.       | 3946479        | 13-05-2013                    | साबरकांठा डिस्ट्रिक्ट को. आपरेटिव मिल्क प्रोड्यूसर्स यूनियन लिमिटेड, पी. ओ. बाक्स 21, सब पोस्ट बोरिया, साबरकांठा, हिममतनगर   | स्किम मिल्क पाउडर   | 13334          | 2   | - 1992   |



| (1) | (2)     | (3)        | (4)   | (5)  | (6)   | (7) | (8) | (9)  |
|-----|---------|------------|---|--|-------|-----|-----|------|
| 8.  | 3948685 | 16-05-2013 | गुजरात टिंबर इंडस्ट्रीज,<br>ब्लॉक नंबर 104, प्लॉट<br>नंबर ए-1, ए-2, बी तथा सी,<br>पालोड, मंगरोल, किम चार<br>रस्ता के पास,<br>सूरत     | वुडन फलश डोर<br>शर्ट्स (सालिड कोर<br>टाईप)                                   | 2202  | 1   | -   | 1999 |
| 9.  | 3949485 | 17-05-2013 | ए वन श्रेशर,<br>सर्वे नंबर 42, पैकी 1, मकतुपुर,<br>सहारा होटल के पास, उंझा<br>सिद्धपुर हाइवे रोड, मकतुपुर,<br>मेहसाना,<br>उंझा-384170 | पावर श्रेशर-सेफटी<br>रिक्वायरमेंट  | 9020  | -   | -   | 2002 |
| 10. | 3947885 | 17-05-2013 | राजधानी फुड बिजनेस,<br>प्लॉट नंबर, जी आई डी<br>एस्टेट, साबरकांठा तालोड  | पैकेजबंद पेयजल<br>(अदर दैन पैकेजड<br>नेचुरल मिनरल<br>वाटर)                   | 14543 | -   | -   | 2004 |
| 11. | 3948584 | 20-05-2013 | नीलकंठ एन्जीनीयरिंग<br>77/1, रमण कोटन कम्पौंड,<br>कच्छ कडवा पाटीदारवाडी<br>के पास, नरोडा रोड,<br>अहमदाबाद-382330                      | सबमर्सिबल पम्पसैट  | 8034  | -   | -   | 2002 |
| 12. | 3952272 | 20-05-2013 | संगम इलेक्ट्रिकलस,<br>ई/9, बिरजू अपार्टमेंट,<br>आजाद सोसाइटी के सामने,<br>अंबावाडी,<br>अहमदाबाद-380015                                | एसी सपलाईड<br>इलेक्ट्रानिक बलासट<br>फार ट्यूबलर<br>फ्लोरसैट लैंप             | 13021 | 1   | -   | 2004 |
| 13. | 3949687 | 23-05-2013 | शिवम इन्डस्ट्रीज,<br>सी-17, क्रीष्णा गोपाल एस्टेट,<br>फोर्ज एंड ब्लोर कंपौंड,<br>नरोडा रोड,<br>अहमदाबाद-380025                        | सबमर्सिबल पम्पसैट  | 8034  | -   | -   | 2002 |
| 14. | 3949384 | 24-05-2013 | कल्याण ज्वैलर्स प्रा. लिमिटेड,<br>कृष्णा बिल्डिंग, इच्छानाथ<br>मंदिर के पास, एसवीएनआई<br>टी के सामने, डयूमस रोड<br>सूरत-395007        | स्वर्ण तथा स्वर्ण<br>धातुओं के आभूषणों<br>शिल्पकारी शुद्धता<br>एवं मुहरांकन  | 1417  | -   | -   | 1999 |
| 15. | 3949586 | 27-05-2013 | मैटकोर स्टील प्र. लिमिटेड,<br>प्लॉट नंबर 210 से 216,<br>जी आई डी सी एस्टेट,<br>एट तालोड, साबरकांठा,<br>ता तालोड-382415                | हाई स्ट्रेंथ डिफामर्ड<br>स्टील बार तथा<br>वायर फार कांक्रिट<br>रेनिफोर्समेंट | 1786  | -   | -   | 2008 |
| 16. | 3949990 | 27-05-2013 | हरीहर मशीन टुल्स<br>ए-9, महोदय एस्टेट,<br>विभाग 2, रामोल पोलीस  | श्री फेस इंडक्शन<br>मोटर्स   | 325   | -   | -   | 1996 |

| (1) | (2)     | (3)        | (4)   | (5)   | (6)   | (7) | (8) | (9)  |
|-----|---------|------------|---|---|-------|-----|-----|------|
| 17. | 3950571 | 27-05-201  | स्टेशन के पीछे, सीटीएम-<br>रामोल रोड,<br>अहमदाबाद-382449  | डायग्नोस्टिक<br>मैडिकल एक्स<br>रे इक्विपमेंट                                | 7620  | 1   | -   | 1994 |
| 18. | 3951674 | 29-05-2013 | जेनयून एक्स रे तथा<br>रेडियोलोजिकल इक्विपमेंट प्रा.<br>लिमिटेड, 3, राधे इंडस्ट्रियल<br>एस्टेट, ब्लॉक नंबर 497 (पी)<br>तेजपुर रोड, गाँव चांगरेदर<br>सरखेज बावला रोड,<br>अहमदाबाद, सानंद-382213 | स्वर्ण तथा स्वर्ण<br>धातुओं के आभूषणों<br>शिल्पकारी शुद्धता<br>एवं मुहरांकन | 1417  | -   | -   | 1999 |
| 19. | 3951977 | 30-05-2013 | रैना ज्वेल्स<br>94, सन विला रो हाउस,<br>सरजन फ्लेट के सामने,<br>मेमनगर,<br>अहमदाबाद-380052  | ओपननैल सबमर्सिबल<br>पम्पसैट   | 14220 | -   | -   | 1994 |
| 20. | 3952070 | 30-05-2013 | टेक्ला एन्जीनीयरिंग<br>अभीषेक एस्टेट, फोर्ज<br>एन्ड ब्लोर कंपाउन्ड के पीछे,<br>ओमकार मिल के सामने,<br>नरोडा रोड,<br>अहमदाबाद-380025   | स्वर्ण तथा स्वर्ण<br>धातुओं के आभूषणों<br>शिल्पकारी शुद्धता<br>एवं मुहरांकन | 1417  | -   | -   | 1999 |
| 21. | 3952575 | 31-05-2013 | शगुन ज्वेल्स<br>बी/2, मेहता मार्केट स्टेशन<br>रोड, बारडोली,<br>सुरत-394601  | स्वर्ण तथा स्वर्ण<br>धातुओं के आभूषणों<br>शिल्पकारी शुद्धता<br>एवं मुहरांकन | 1417  | -   | -   | 1999 |

[सं. सीएमडी/13:11]

डॉ. एस. एल. पालकर, वैज्ञानिक 'एफ' एवं प्रमुख

New Delhi, the 10th January, 2014

**S.O. 428.**—In pursuance of sub-regulation (5) of the Regulation 4 of the Bureau of Indian Standards (Certification) Regulations 1988, of the Bureau of Indian Standards, hereby notifies the grant of licences particulars of which are given in the following schedule :—

**SCHEDULE**

| Sl. No. | Licences No. | Grant Date | Name and Address of the Party   | Title of the Standard  | IS No. | Part | Sec. | Year |
|---------|--------------|------------|---|--|--------|------|------|------|
| (1)     | (2)          | (3)        | (4)   | (5)  | (6)    | (7)  | (8)  | (9)  |
| 1.      | 3943170      | 02-05-2013 | Vishal Ispat<br>Survey No. 38/2 P,<br>39/4, 5 & 6, 4/1, 2 & 3<br>Village : Morai,<br>Taluka : Paradi<br>Valsad-396191 | High Strength<br>deformed steel<br>bars and wires<br>for concrete<br>reinforcement | 1786   | -    | -    | 2008 |

| (1) | (2)     | (3)        | (4)  | (5)   | (6)   | (7) | (8) | (9)  |
|-----|---------|------------|--|---|-------|-----|-----|------|
| 2.  | 3944778 | 08-05-2013 | Kothari Wellness<br>Plot No. 40, Mahagujart<br>Industrial Estate,<br>Opp Vinayak Estate,<br>Near Pharma Lab.<br>Sarkhej-Bavla Road,<br>N. H. No. 8, Moraiya<br>Ahemdabad,<br>Tal Sanand-382213 | Packaged drinking<br>water (other than<br>packaged natural<br>mineral water) -  | 14543 | -   | -   | 2004 |
| 3.  | 3945881 | 08-05-2013 | Ashwini Steel Private<br>Limited, 2 KM Stone,<br>Bavla Sanand Highway<br>Vill : Lodriyal Bavla,<br>Ahemdabad-382220  | Carbon steel cast<br>billet ingots, billets,<br>blooms and slabs for<br>re-rolling into steel<br>for general struct-<br>ural purposes | 2830  | -   | -   | 2012 |
| 4.  | 3945376 | 09-05-2013 | Astmangal<br>101, Shree Virkala Complex,<br>Opp. Dedka Ni Pole,<br>M. G Haveli Road<br>Menek Chowk,<br>Ahmedabad   | Gold and gold<br>alloys, Jewellery/<br>artefacts—fineness<br>and marking  | 1417  | -   | -   | 1999 |
| 5.  | 3945477 | 09-05-2013 | High Fashion Jewellers<br>6/860 Chhaparia Sheri<br>Mahidharpura,<br>Surat-395003   | Gold and gold<br>alloys, Jewellery/<br>artefacts—fineness<br>and marking  | 1417  | -   | -   | 1999 |
| 6.  | 3945578 | 10-05-2013 | Soni Sanjay Kumar<br>Manubhai “Gold<br>House” Khetarpal<br>Ni Pole, Manek Chowk<br>Ahemdabad   | Gold and gold<br>alloys, Jewellery/<br>artefacts—fineness<br>and marking  | 1417  | -   | -   | 1999 |
| 7.  | 3946479 | 13-05-2013 | Sabarkantha Dist. Co-Op<br>Milk Producers, Union<br>Limited, P. O. Box No. 21,<br>Sub Post Boria<br>Sabarkantha,<br>Himatnagar   | Skim milk powder  | 13334 | 2   | -   | 1992 |
| 8.  | 3948685 | 16-05-2013 | Gujarat Timber Industries<br>Block No. 104, Plot No.<br>A-1, A-2, B & C Palod,<br>Mangrol. Nar Kim<br>Char Rasta,<br>Surat   | Wooden flush<br>door shutters<br>(solid core type)  | 2202  | 1   | -   | 1999 |
| 9.  | 3949485 | 17-05-2013 | A-One Thresher<br>Survey No. 42 Paiki 1,<br>Maktupur, Near Sahara<br>Hotel, Unjha-Siddhpur<br>High way Road,<br>Maktupur, Mahesana<br>Unjha-384170   | Power threshers-<br>Safety require-<br>ments  | 9020  | -   | -   | 2002 |

| (1) | (2)     | (3)        | (4)  | (5)  | (6)   | (7) | (8) | (9)  |
|-----|---------|------------|--|--|-------|-----|-----|------|
| 10. | 3947885 | 17-05-2013 | Rajdhani Food Beverages<br>Plot No. 291, GIDC<br>Estate, Sabarkantha,<br>Talod   | Packaged drinking<br>water (other than<br>packaged natural<br>mineral water) -     | 14543 | -   | -   | 2004 |
| 11. | 3948584 | 20-05-2013 | Nilkanth Engineering<br>77/1, Raman Cotton<br>Compound, Nr. Kachchh<br>Kadva, Patidarvadi<br>Naroda Road,<br>Ahmadabad-382330  | Submersible<br>Pumpsets  | 8034  | -   | -   | 2002 |
| 12. | 3952272 | 20-05-2013 | Sangam Electricals<br>E/9, Birju Apartments,<br>Opp. Azad Society,<br>Ambawadi<br>Ahmadabad-380015   | Ac supplied<br>electronic<br>ballasts for<br>tubular flores-<br>cent lamps.        | 13021 | 1   | -   | 1991 |
| 13. | 3949687 | 23-05-2013 | Shivam Industries<br>C/17, Krishna Gopal<br>Estate, Forge &<br>Blower Compound,<br>Naroda Road,<br>Ahmedabad-380025  | Submersible<br>Pumpsets  | 8034  | -   | -   | 2002 |
| 14. | 3949384 | 24-05-2013 | Kalyan Jewellers India<br>Pvt. Ltd. Krishna Building,<br>Near Ichhanath Temple,<br>Opp Svnit, Dumas Road,<br>Surat -395007   | Gold and gold<br>alloys, Jewellery/<br>artefacts—fineness<br>and marking           | 1417  | -   | -   | 1999 |
| 15. | 3949586 | 27-05-2013 | Metcor Steel Private<br>Limited, Plot No. 210<br>to 216, GIDC Estate,<br>At : Talod, Sabarkantha<br>Taluka : Talod-382415  | High Strength<br>deformed steel<br>bars and wires<br>for concrete<br>reinforcement | 1786  | -   | -   | 2008 |
| 16. | 3949990 | 27-05-2013 | Hareehar Machine Tools<br>A-9, Mahadev Estate,<br>Part 2, B/H Ramol Police<br>Station, CTM- Ramol<br>Ahmedabad-382449  | Three phase<br>induction motors  | 325   | -   | -   | 1996 |
| 17. | 3950571 | 27-05-2013 | Genuine X-Ray and<br>Radiological Equipment<br>Pvt. Ltd., 3, Radhe<br>Industrial Estate,<br>Block No. 497 (P)<br>Tajpur Road ,<br>Village : Changodar<br>Sarkhej-Bavla Road,<br>Ahmedabad<br>Sanand-382213 | Diagnostic<br>medical<br>x-ray<br>equipment  | 7620  | 1   | -   | 1986 |
| 18. | 3951674 | 29-05-2013 | Raina Jewels,<br>94. Sun Villa Row Houses,<br>Opp Sarjan Flat,<br>Memnagar,<br>Ahmedabad-380052  | Gold and gold<br>alloys, Jewellery/<br>artefacts—fineness<br>and marking           | 1417  | -   | -   | 1999 |



| (1) | (2)     | (3)        | (4)  | (5)  | (6)   | (7) | (8) | (9)  |
|-----|---------|------------|--|--|-------|-----|-----|------|
| 19. | 3951977 | 30-05-2013 | Texla Engineering,<br>1, Abhishek Estate,<br>Behind Forge &<br>Blower Compound,<br>Opp Omkar Mill,<br>Naroda Road,<br>Ahmedabad 380025 | Openwell<br>Submersible<br>Pumpsets                                      | 14220 | -   | -   | 1994 |
| 20. | 3952070 | 30-05-2013 | Shagun Jewellers<br>B/2 Mehta Market,<br>Station Road,<br>Bardoli<br>Surat 394601  | Gold and gold<br>alloys, Jewellery/<br>artefacts—fineness<br>and marking | 1417  | -   | -   | 1999 |
| 21. | 3952575 | 31-05-2013 | Shree Sudarshan Jewellers<br>Nagarkuva Ckawk,<br>Petlad,<br>Anand- 388450  | Gold and gold<br>alloys, Jewellery/<br>artefacts—fineness<br>and marking | 1417  | -   | -   | 1999 |

[No. CMD/13 : 11 ]

Dr. S. L. PALKAR, Scientist 'F' &amp; Head

नई दिल्ली, 10 जनवरी, 2014

**का.आ. 429.**—भारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988 के विनियम 5 के उप-विनियम (6) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि निम्न विवरण वाले लाइसेंसों को उनके आगे दर्शायी गई तारीख से रद्द/स्थगित कर दिया गया है :-

**अनुसूची**

| क्र. सं. | लाइसेंस सं.<br>सीएम/एल-<br>व पता | लाइसेंसधारी का नाम | लाइसेंस के अन्तर्गत वस्तु/प्रकम<br>सम्बद्ध भारतीय मानक का शीर्षक | रद्द करने की तिथि |
|----------|----------------------------------|--------------------|--|-------------------|
|          |                                  | कोई नहीं           |  |                   |

[संख्या सी एम डी/13:13]

डॉ. एस. एल. पालकर, वैज्ञानिक 'एफ' एवं प्रमुख

New Delhi, the 10th January, 2014

**S.O. 429.**—In pursuance of sub-regulation (6) of the Regulation 5 of the Bureau of Indian Standards (Certification) Regulations, 1988 of the Bureau of Indian Standards, hereby notifies that the licences particulars of which are given below have been cancelled/suspended with effect from the date indicated against each :

**SCHEDULE**

| Sl. No. | Licences<br>No.<br>CM/L- | Name and Address of the<br>Licensee | Article/Process with relevant Indian<br>Standards covered by the licence<br>cancelled | Date of<br>Cancellation |
|---------|--------------------------|-------------------------------------|---|-------------------------|
|         |                          | NIL                                 |   |                         |

[No. CMD/13:13]

Dr. S. L. PALKAR, Scientist 'F' &amp; Head

नई दिल्ली, 23 जनवरी, 2014

**का.आ. 430.**—भारतीय मानक ब्यूरो (प्रमाणन) विनियम 1988 के विनियम 4 के उप-नियम (5) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिन लाइसेंसों के विवरण नीचे अनुसूची में दिए गए हैं, वे स्वीकृत कर दिए गए हैं :—

**अनुसूची**

| क्रम सं. | लाइसेंस सं. | स्वीकृत करने की तिथि वर्ष/माह | लाइसेंसधारी का नाम व पता  | भारतीय मानक का शीर्ष   | भा मा सं. (भाग/अनुभाग) : वर्ष |
|----------|-------------|-------------------------------|---|--|-------------------------------|
| 1        | 2           | 3                             | 4   | 5  | 6                             |
| 1.       | 4660264     | 20131108                      | मैसर्स श्री मदुरै मीनाक्षी अम्मन स्टील री-रोलिंग मिल इंडिया प्राइवेट लिमिटेड यूनिट-1, 92, पी. एन. पालयम रोड, के. आर. पुरम, गणपति, कोयम्बतूर-641006              | सामान्य संरचना इस्पात में पुनर्वेल्लन के लिए कॉर्बन, ढलवाँ इस्पात बिलेट इंगट, बिलेट, ब्यूम एवं स्लैब | IS 2830 : 2012                |
| 2.       | 4662672     | 20131118                      | मैसर्स श्री कन्दन इंजीनियरिंग, सं. 6, 8वाँ सड़क, धरनी नगर एक्सटेंशन, गणपतिपुर, गणपति, कोयम्बतूर-641006  | स्वच्छ ठंडे पानी के लिए अपकेन्द्रीय पुनरुत्पादक पम्प   | IS 8472 : 1998                |
| 3.       | 4665577     | 20131125                      | मैसर्स वैक्कै इंडस्ट्रीस, साइट सं. 9, एस. एफ. सं. 362/1, अग्रवाल स्कूल रोड, पंजाबी असोसियेशन के सामने, के. एन. जी. पुदूर पिरिवु, कणुवाई पोस्ट, कोयम्बतूर-641108 | खुले कुओं के लिए निम्नजनीय पम्पसेट   | IS 14220 : 1994               |
| 4.       | 4665880     | 20131125                      | मैसर्स श्री अरकलम इंडस्ट्रीस, साइट सं. 2, टॉवर बिल्डिंग, बालागुरु गार्डन, पीलामेडू, कोयम्बतूर-641004  | निम्नजनीय पम्पसेट  | IS 8034 : 2002                |
| 5.       | 4665779     | 20131125                      | मैसर्स श्री अरकलम इंडस्ट्रीस, साइट सं. 2, टॉवर बिल्डिंग, बालागुरु गार्डन, पीलामेडू, कोयम्बतूर-641004  | निम्नजनीय पम्पसेट के लिए मोटर  | IS 9283 : 1995                |

[सं. सी एम डी-13 : 11]

एम. सदाशिवम, वैज्ञानिक 'एफ' एवं प्रमुख

New Delhi, the 23rd January, 2014

**S.O. 430.**—In pursuance of sub-regulation (5) of the regulation 4 of the Bureau of Indian Standards (Certification) Regulation 1988, of the Bureau of Indian Standards, hereby notifies the grant of licence particulars of which are given in the following schedule :

**SCHEDULE**

| Sl. No. | Licence No. | Grant Date | Name and Address (Factory) of the Party   | Title of the Standard  | IS No. Part/ Sec. Year |
|---------|-------------|------------|---|--|------------------------|
| 1       | 2           | 3          | 4   | 5  | 6                      |
| 1.      | 4660264     | 20131108   | M/s. Sri Madurai Meenakshi Amman Steel Re-Rolling Mill India Private Limited Unit-1, 92, P.N. Palayam Road, K. R. Puram, Ganapathy, Coimbatore-641006 | Covered electrodes for manual metal arc welding of carbon and carbon manganese steel | IS : 2830 : 2012       |

| 1  | 2       | 3        | 4  | 5  | 6               |
|----|---------|----------|--|--|-----------------|
| 2. | 4662672 | 20131118 | M/s. Sri Kandan Engineering No. 6, 8th Street, Dharani Nagar Extension, Ganapathy puthur, Ganapathy, Coimbatore-641006.                              | Centrifugal Regenerative Pumps for clear, cold water | IS 8472 : 1998  |
| 3. | 4665577 | 20131125 | M/s. Vaikkai Industries, Site No. 9, SF No. 362/1, Agarwal School Road, Opp. Punjabi Association, KNG Pudur Pirivu, Kanuvai Post, Coimbatore-641108. | Opewell Submersible Pumpsets                         | IS 14220 : 1994 |
| 4. | 4665880 | 20131125 | M/s. Sri Arkalam Industries, Site No. 2, Tower Building, Balaguru Garden, Peelamedu, Coimbatore-641004.  | Submersible Pumpsets                                 | IS 8034 : 2002  |
| 5. | 4665779 | 20131125 | M/s. Sri Arkalam Industries, Site No. 2, Tower Building, Balaguru Garden, Peelamedu, Coimbatore-641004.  | Motors for Submersible Pumpsets                      | IS 9283 : 1995  |

[No. CMD/13 : 11]

M. SADASIVAM, Scientist 'F' &amp; Head

नई दिल्ली, 23 जनवरी, 2014

**का.आ. 431.**—भारतीय मानक ब्यूरो (प्रमाणन) विनियम 1988 के विनियम 4 के उप-नियम (5) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिन लाइसेंसों के विवरण नीचे अनुसूची में दिए गए हैं, वे स्वीकृत कर दिए गए हैं :—

**अनुसूची**

| क्रम सं. | लाइसेंस सं. | स्वीकृत करने की तिथि वर्ष/माह | लाइसेंसधारी का नाम व पता  | भारतीय मानक का शीर्ष   | भा मा सं. (भाग/अनुभाग) : वर्ष |
|----------|-------------|-------------------------------|---|--|-------------------------------|
| 1.       | 4670772     | 20131205                      | मैसर्स जय शक्ति एक्वा फार्म, दरवाजा सं. 8/1139A, एस. एफ. सं. 148.B/1L, पूलुवापट्टी बस स्टॉप के पास, पूलुवापट्टी पोस्ट ऑफिस, पी. एन. रोड, तिरुप्पुर-641602 | पैकेजबंद पेयजल (पैकेजबंद मिनरल जल के अलावा)                                      | IS : 14543 : 2004             |
| 2.       | 4674477     | 20131216                      | मैसर्स वी. आर. पॉवरजेन एक्वूपमेंट्स, # 9 & 10, पीलमेडु इंडस्ट्रियल एस्टेट, वी. के. रोड, तन्नीर पन्दल, कोयम्बतूर-641004                                    | साफ और ठंडे पानी के लिए क्षैतिज अपकेन्द्री पम्प-भाग 1—कृषि एवं जल आपूर्ति के लिए | IS : 6595 (Part 1) : 2006     |
| 3.       | 4678182     | 20131217                      | मैसर्स मिडास सेफ्टी प्रोडक्ट्स प्रायवेट लिमिटेड, एस. एफ. सं. 527, कारेगौन्डमपालयम, पोगलूर-कोवै रोड, अन्नूर, कोयम्बतूर-641697                              | निजी सुरक्षा उपस्कर—भाग 2—सुरक्षा फुटवेयर  | IS : 15298 (Part 2) : 2011    |
| 4.       | 4682678     | 20131224                      | मैसर्स अल्फा इंजीनियरिंग इंडस्ट्री, सं. 2A, 6वां क्रास, वी. के. रोड, तन्नीर पन्दल, पीलमेडु, कोयम्बतूर-641004  | निम्नजनीय पम्पसेट के लिए मोटर  | IS : 9283 : 1995              |

| 1  | 2       | 3        | 4  | 5   | 6                |
|----|---------|----------|--|---|------------------|
| 5. | 4678485 | 20131224 | मैसर्स निर्मल पम्प्स (प्राइवेट) लिमिटेड,<br>एस एफ सं. 434, 6वां क्रॉस, विलन्कुरिची<br>रोड, तन्नीर पन्दल के पास, पीलमेडु,<br>कोयम्बतूर-641004 | कृषि एवं जल आपूर्ति के लिए<br>बिजली के मोनोसेट पम्प्स | IS : 9079 : 2002 |

[सं. सी एम डी-13 : 11]

एम. सदाशिवम, वैज्ञानिक 'एफ' एवं प्रमुख

New Delhi, the 23rd January, 2014

**S.O. 431.**—In pursuance of sub-regulation (5) of the regulation 4 of the Bureau of Indian Standards (Certification) Regulation 1988, of the Bureau of Indian Standards, hereby notifies the grant of licence particulars of which are given in the following schedule :

**SCHEDULE**

| Sl. No. | Licence No. | Grant Date | Name and Address (Factory) of the Party   | Title of the Standard  | IS No. Part/ Sec. Year      |
|---------|-------------|------------|---|--|-----------------------------|
| 1.      | 4670772     | 20131205   | M/s. Jai Sakthi Aqua Farm,<br>D. No. 8/1139A, S. No. 148-B/1L,<br>Near Pooluvapatti Bus-stop,<br>Pooluvapatti (P.O.), P. N. Road,<br>Tiruppur-641602. | Packaged Drinking Water<br>(other than Packaged<br>Natural Mineral Water)                                      | IS 14543 : 2004             |
| 2.      | 4674477     | 20131216   | M/s. V. R. Powergen Equipment,<br># 9 & 10, Peelamedu Industrial<br>Estate, V. K. Road, Thanneer<br>Panthal, Coimbatore-641004.                       | Horizontal Centrifugal<br>Pumps for Clear, cold<br>water—Part 1—Agri-<br>cultural and Water<br>Supply purposes | IS 6595 (Part 1) :<br>2006  |
| 3.      | 4678182     | 20131217   | M/s. Midas Safety Products<br>Private Limited, Sf No. 527,<br>Karegoundampalayam, Pogalur-<br>Kovai Road, Annur,<br>Coimbatore-641697.                | Personnal Protective<br>Equipment—Part 2—<br>Safety Footwear   | IS 15298 (Part 2) :<br>2011 |
| 4.      | 4682678     | 20131224   | M/s. Alfaa Engineering Industry,<br>No. 2A, 6th Cross, V. K. Road,<br>Thanneer Pandal, Peelamedu,<br>Coimbatore-641004.                               | Motors for Submersible<br>Pumpsets   | IS 9283 : 1995              |
| 5.      | 4678485     | 20131224   | M/s. Nirmal Pumps (Pvt.) Limited,<br>SF No. 434, 6th Cross, Vilankrichi<br>Road, Near Thanneerpandal,<br>Peelamedu, Coimbatore-641004.                | Electric, Monoset Pumps<br>for Clear, Cold Water for<br>Agricultural and Water<br>Supply purposes              | IS 9079 : 2002              |

[No. CMD/13 : 11]

M. SADASIVAM, Scientist 'F' &amp; Head

नई दिल्ली, 23 जनवरी, 2014

**का.आ. 432.**—भारतीय मानक ब्यूरो (प्रमाणन) विनियम 1988 के विनियमन 5 के उप-विनियमन (6) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि निम्न विवरण वाले लाइसेंसों को उनके आगे दर्शाई गई तारीख से रद्द/स्थगित कर दिया गया है :—

## अनुसूची

| क्रम सं. | लाइसेंस सं. सी एम/एल | लाइसेंसधारी का नाम व पता  | स्थगित किए गए/रद्द किए गए लाइसेंस के अंतर्गत वस्तु/प्रक्रम सम्बद्ध भारतीय मानक का शीर्षक | रद्द होने की तिथि |
|----------|----------------------|---|--|-------------------|
| 1.       | 4532154              | मैसर्स जास्मिन बिसलरीज, एस एफ सं. 482, वेल्लिपालयम, अलनोम्बू पोस्ट, सिरुमुगै के रास्ते, मेट्टुपालयम तालुक, कोयम्बतूर-641302 | पैकेजबंद पेयजल (पैकेजबंद मिनरल जल के अलावा) IS 14543 : 2004                              | 12-11-2013        |
| 2.       | 6186171              | मैसर्स फाइनटेक पाइप प्रोडक्ट्स, 1/359, पुलियमपट्टी रोड, पोलवापालयम पोस्ट, नम्बियूर, गोबी तालुक, ईरोड-638458                 | पेयजल आपूर्ति के लिए उच्च घनत्व वाले पॉलीएथिलीन पाइप्स IS 4984 : 1995                    | 12-11-2013        |

[सं. सी एम डी-13 : 13]

एम. सदाशिवम, वैज्ञानिक 'एफ' एवं प्रमुख

New Delhi, the 23rd January, 2014

**S.O. 432.**—In pursuance of sub-regulation (6) of the regulation 5 of the Bureau of Indian Standards (Certification) Regulation 1988, of the Bureau of Indian Standards, hereby notifies that the licence particulars of which are given below have been cancelled/suspended with effect from the date indicated against each :

## SCHEDULE

| Sl. No. | Licence No. CM/L | Name & Address of the Licensee   | Article/Process with relevant Indian Standard covered by the licence cancelled/suspension | Date of Cancellation |
|---------|------------------|--|---|----------------------|
| 1.      | 4532154          | M/s. Jasmine Bisilaries, SF No. 482, Vellipalayam, Alangombu (P.O.), Sirumugai (Via), Mettupalayam (TK), Coimbatore-641302 | Packaged Drinking Water (Other than Packaged natural mineral water) IS : 14543 : 2004     | 12-11-2013           |
| 2.      | 6186171          | M/s. Finetech Pipe Products, 1/359, Puliampatty Road, Polava Palayam (P.O.), Nambiyur, Gobi (TK), Erode-638458.            | HDPE pipes for water supply IS 4984 : 1995  | 12-11-2013           |

[No. CMD/13 : 13]

M. SADASIVAM, Scientist 'F' &amp; Head

नई दिल्ली, 23 जनवरी, 2014

**का.आ. 433.**—भारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988 के विनियम 5 के उप-विनियम (6) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि निम्न विवरण वाले लाइसेंसों को उनके आगे दर्शायी गई तारीख से रद्द/स्थगित कर दिया गया है :-

## अनुसूची

| क्र. सं. | लाइसेंस सं. सीएम/एल- | लाइसेंसधारी का नाम व पता | स्थगित किए गए/रद्द किए गए लाइसेंस के अन्तर्गत वस्तु/प्रक्रम सम्बद्ध भारतीय मानक का शीर्षक | रद्द होने की तिथि |
|----------|----------------------|--------------------------|---|-------------------|
|----------|----------------------|--------------------------|---|-------------------|

दिसम्बर 2013 -शून्य

[सं. सीएमडी/13:13]

एम. सदाशिवम, वैज्ञानिक 'एफ' एवं प्रमुख

New Delhi, the 23rd January, 2014

**S.O. 433.**—In pursuance of sub-regulation (6) of the Regulation 5 of the Bureau of Indian Standards (Certification) Regulations, 1988 of the Bureau of Indian Standards, hereby notifies that the licence particulars of which are given below have been cancelled/suspended with effect from the date indicated against each :—

**SCHEDULE**

| Sl. No.             | Licence No.<br>CML- | Name and Address of the Licensee | Article/Process with relevant Indian Standards covered by the licence cancelled/suspension | Date of Cancellation |
|---------------------|---------------------|----------------------------------|--|----------------------|
| December 2013 - NIL |                     |                                  |  |                      |

[No. CMD/13:13]

M. SADASIVAM, Scientist 'F' & Head

नई दिल्ली, 31 जनवरी, 2014

**का.आ. 434.**—भारतीय मानक ब्यूरो नियम 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिन भारतीय मानकों के विवरण नीचे अनुसूची में दिए गए हैं वे स्थापित हो गये हैं।

**अनुसूची**

| क्रम संख्या | स्थापित भारतीय मानक (कों) की संख्या, वर्ष और शीर्षक   | स्थापित तिथि               | भारतीय मानक (कों) जो कि रद्द होने हैं, अगर है की संख्या, वर्ष और शीर्षक | रद्द होने की तिथि |
|-------------|---|----------------------------|---|-------------------|
| 1           | 2   | 3                          | 4   | 5                 |
| 1.          | आई एस 16129: 2013<br>डिजिटल टेरेस्ट्रियल<br>एचडीटी/एसडीटीवी की प्राप्ति<br>के लिये सेट टॉप बॉक्स विशिष्टि | प्रस्तावित तारीख<br>तत्काल | -   | -                 |

इस भारतीय मानक की प्रतियाँ भारतीय मानक ब्यूरो, मानक भवन, 9 बहादुरशाह जफर मार्ग, नई दिल्ली-110 002 क्षेत्रीय कार्यालयों: नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई, तथा शाखा कार्यालयों: अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध हैं। भारतीय मानकों को <http://www.standards.in> द्वारा इंटरनेट पर खरीदा जा सकता है।

[पीयूबी/एसटीडी-1/जीएन-आईएस/6/29]

कला. एम. वरियर, निदेशक (विदेशी भाषा एवं प्रकाशन)

New Delhi, the 31st January, 2014

**S.O. 434.**—In pursuance of Clause (b) of sub-rule (1) of Rules 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the second column of Schedule hereto annexed has been established on the date indicated against it in third column. The particulars of the standards, if any, which are given in the fourth column shall also remain in force concurrently till they are cancelled on the date indicated against them in the fifth column.—

**SCHEDULE**

| S. No. | No. & Year of the Indian Standards   | Date of Establishment   | No. & Year of the Indian Standards to be cancelled, in any | Date of cancellation |
|--------|--|-------------------------|--|----------------------|
| 1      | 2  | 3                       | 4  | 5                    |
| 1.     | IS 16129: 2013<br>Set top box for digital terrestrial HDTV/SDTV reception- specification | Proposed date—immediate | -  | -                    |



Copies of these standards are available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices: Kolkatta, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Kochi.

[PUB/STD-1/GN-IS/6/29]

KALA M. VARIAR, Director (Foregin Languages &amp; Publication)

**विद्युत मंत्रालय**

नई दिल्ली, 27 जनवरी, 2014

**का.आ. 435.**—केंद्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग)नियम, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में विद्युत मंत्रालय के प्रशासनिक नियंत्रणाधीन पावर ग्रिड कारपोरेशन ऑफ इंडिया लिमिटेड के निम्नलिखित कार्यालयों को, जिनके 80 प्रतिशत कर्मचारीवृंद ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, एतद्वारा अधिसूचित करती है -

- (i) पावर ग्रिड कारपोरेशन ऑफ इंडिया लिमिटेड,  
पूर्वी क्षेत्र पारेषण प्रणाली -II क्षेत्रीय मुख्यालय,  
जे-1-15, 'ईपी ब्लॉक, साल्टलेक, सेक्टर-V  
कोलकाता-700 091
- (ii) पावर ग्रिड कारपोरेशन ऑफ इंडिया लिमिटेड,  
सुवर्णा भवन, मकान सं. 12, जीएस रोड,  
उलूबारी, गुवाहाटी, असम-781 007

[सं. 11017/10/2013-हिंदी]

रीता आचार्य, संयुक्त सचिव

**MINISTRY OF POWER**

New Delhi, the 27th January, 2014

**S.O. 435.**—In pursuance of Sub Rule (4) of Rule 10 of the Official Language (use for official purpose of the union) Rules, 1976, the Central Government hereby notify the following offices of the Power Grid Corporation of India Ltd. under the administrative control of Ministry of Power, where 80% of the staff have acquired working knowledge of Hindi:—

- (i) Power Grid Corporation of India Limited,  
Eastern Region Transmission System-II  
RHQ, K-1-15, 'EP' Block, Salt Lake  
Sector-V, Kolkata- 700091
- (ii) Power Grid Corporation of India Limited,  
Suwarna Bhavan, House No.-12, G.S. Road,  
Ulubari, Guwahati, Assam-781007

[No. 11017/10/2013-Hindi]

RITA ACHARYA, Jt. Secy.

**कोयला मंत्रालय****आदेश**

नई दिल्ली, 31 जनवरी, 2014

**का.आ. 436.**—कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 9 की उप-धारा (1) के अधीन जारी, भारत के राजपत्र, साप्ताहिक भाग II, खंड 3, उप-खंड (ii), तारीख 21 से 27 सितम्बर, 2008 में प्रकाशित भारत सरकार के कोयला मंत्रालय की अधिसूचना का.आ. संख्यांक 2692, तारीख 22 सितम्बर, 2008 के प्रकाशन पर, उक्त अधिसूचना से संलग्न अनुसूची में वर्णित भूमि (जिसे इसमें इसके पश्चात् उक्त भूमि कहा गया है) और ऐसी भूमि में या उस पर के सभी अधिकार, उक्त अधिनियम की धारा 10 की उप-धारा (1) के अधीन, सभी विल्लंगमों से मुक्त होकर, आत्यंतिक रूप में केन्द्रीय सरकार में निहित हो गए थे;

और, केन्द्रीय सरकार का यह समाधान हो गया है, कि वेस्टर्न कोलफील्ड्स लिमिटेड, नागपुर (जिसे इसमें इसके पश्चात् सरकारी कंपनी कहा गया है), ऐसे निबंधनों और शर्तों का, जो केन्द्रीय सरकार इस निमित्त अधिरोपित करना उचित समझे अनुपालन करने के लिए रजामंद है;

अतः अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 11 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निदेश देती है कि उक्त भूमि और उक्त भूमि में या उस पर के इस प्रकार निहित सभी अधिकार तारीख 27 सितम्बर, 2008 से केन्द्रीय सरकार में इस प्रकार निहित बने रहने के बजाए, निम्नलिखित निबंधनों और शर्तों के अधीन रहते हुए, सरकारी कंपनी में निहित हो जाएंगे, अर्थात्

- (i) सरकारी कंपनी, उक्त अधिनियम के उपबंधों के अधीन यथा अवधारित प्रतिकर, ब्याज, नुकसानियों और वैसी ही मदों की बाबत किए गए सभी संदायों की केन्द्रीय सरकार को प्रतिपूर्ति करेगी;
- (ii) शर्त (1) के अधीन सरकारी कंपनी द्वारा, केन्द्रीय सरकार को संदेय रकमों का अवधारण करने के प्रयोजनों के लिए उक्त अधिनियम की धारा 14 के अधीन एक अधिकरण का गठन किया जाएगा और ऐसे किसी अधिकरण तथा अधिकरण की सहायता के लिए नियुक्त व्यक्तियों के संबंध में उपगत सभी व्यय, सरकारी कंपनी द्वारा वहन किए जाएंगे और इस प्रकार निहित उक्त भूमि में या उस पर के अधिकारों के लिए या उनके संबंध में जोकि अपील, आदि, सभी विधिक कार्यवाहियों की बाबत उपगत सभी व्यय भी सरकारी कंपनी द्वारा वहन किए जाएंगे;
- (iii) सरकारी कंपनी, केन्द्रीय सरकार या उसके पदधारियों की, ऐसे किसी अन्य व्यय के संबंध में क्षतिपूर्ति करेगी, जो इस प्रकार निहित उक्त भूमि में या उस पर के अधिकारों के बारे में, केन्द्रीय सरकार या उसके पदधारियों द्वारा या उनके विरुद्ध किन्हीं कार्यवाहियों के संबंध में आवश्यक हो;
- (iv) सरकारी कंपनी को केन्द्रीय सरकार के पूर्व अनुमोदन के बिना उक्त भूमि और उस पर के अधिकारों को किसी अन्य व्यक्ति को अंतरित करने की शक्ति नहीं होगी; और
- (v) सरकारी कंपनी, ऐसे निर्देशों और शर्तों का पालन करेगी, जो केन्द्रीय सरकार द्वारा, जब कभी आवश्यक हो, उक्त भूमि के विशिष्ट क्षेत्रों के लिए दिए जाएं या अधिरोपित किए जाएं।

[फा. सं. 43015/06/2005-पीआरआईडब्ल्यू-1]

दोमिनिक डुंगडुंग, अवर सचिव

### MINISTRY OF COAL ORDER

New Delhi, the 31st January, 2014

**S.O. 436.**—Whereas on the publication of the notification of the Government of India in the Ministry of Coal, number S.O. 2692, dated the 22nd September, 2008, published in the weekly Gazette of India, Part II, Section 3, Sub-section (ii), dated 21st to 27th September, 2008, issued under sub-section (1) of Section 9 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) (hereinafter referred to as the said Act), the land and all rights in or over the land described in the Schedule appended to the said notification (hereinafter referred to as the said land) are vested absolutely in the Central Government free from all encumbrances under sub-section (1) of Section 10 of the said Act;

And whereas, the Central Government is satisfied that the Western Coalfields Limited, Nagpur (hereinafter referred to as the Government Company) is willing to comply with such terms and conditions as the Central Government thinks fit to impose in this behalf,

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 11 of the said Act, the Central Government hereby directs that the said land and all rights in or over the said land so vested shall, with effect from 27th September, 2008 instead of continuing to so vest in the Central Government, shall vest in the Government Company, subject to the following terms and conditions, namely:—

- (i) the Government Company shall reimburse the Central Government all payments made in respect of compensation, interest, damages and the like, as determined under the provisions of the said Act;
- (ii) a Tribunal shall be constituted under section 14 of the said Act, for the purpose of determining the amounts payable to the Central Government by the Government Company under condition (1) and all expenditure incurred in connection with any such Tribunal and persons appointed to assist the Tribunal shall be borne by the Government Company and similarly, all expenditure incurred in respect of all legal proceedings like appeals, etc. for or in connection with the rights, in or over the said land, so vested, shall also be borne by the Government Company;
- (iii) the Government Company shall indemnify the Central Government or its officials against any other expenditure that may be necessary in connection with any proceedings by or against the Central Government or its officials regarding the rights in or over the said land so vested;
- (iv) the Government Company shall have no power to transfer the said lands and rights to any other person without the prior approval of the Central Government; and
- (v) the Government Company shall abide by such directions and conditions as may be given or imposed by the Central Government for particular areas of the said land, as and when necessary.

[F.No. 43015/06/2005-PRIW-I]

DOMINIC DUNG DUNG, Under Secy.

**श्रम एवं रोजगार मंत्रालय**

नई दिल्ली, 17 जनवरी, 2014

**का.आ. 437.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.-2, धनबाद के पंचाट (संदर्भ संख्या 62 का 2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-1-2014 को प्राप्त हुआ था।

[सं. एल-20012/122/2011-आई आर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

**MINISTRY OF LABOUR AND EMPLOYMENT**

New Delhi, the 17th January, 2014

**S.O. 437.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 62/2012) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the Industrial Dispute between the Management of Katras Area of M/s. BCCL and their workmen, received by the Central Government on 17-1-2014.

[No. L-20012/122/2011-IR (CM-I)]

M. K. SINGH, Section Officer

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD****PRESENT : SHRI KISHORI RAM, Presiding Officer**

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947.

**REFERENCE NO. 62 OF 2012****PARTIES :**The Jt.Gen.Secretary,  
Bahujan Mazdoor Union,  
Dhansar, Dhanbad

Vs.

General Manager,  
Katras Area of  
M/s. BCCL, Dhanbad,**APPEARANCES :**On behalf of the : Mr.R. R. Ram, Ld. Advocate  
workman/UnionOn behalf of the : Mr. D.K.Verma, Ld. Advocate  
Management

State : Jharkhand

Industry: Coal

Dated, Dhanbad, the 18th December, 2013

**AWARD**

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/122/2011-IR(CM-I) dt. 06.09.2012.

**SCHEDULE**

“Whether the action of the Management of Anagarpather Colliery of M/s BCCL in dismissing Sri Sanjay Lohar, Ex-M/Loader from the services of the Company vide order dt.6/10.4.1995 is fair and justified? To what relief is the workman concerned entitled?

2. Mr.R.R.Ram, the Ld. Advocate for the Bahujan Mazdoor Union/Workman Sanjay Lohar present just as Mr. D.K. Verma the Ld. Advocate for the OP/Management.

Heard both the Ld.Counsels for the respective parties over the petition of the Management dt. 20.5.2012 for maintainability of the present Reference. Mr. D.K. Verma the Ld. Counsel for the O.P./Management has submitted that the present reference is not maintainable either in Law or fact, as previously the Reference No.295/2000 of the present workman Sanjay Lohar, Ex-M/Loader, who was dismissed by the Management from his service on the ground of absentism after legally conducting the domestic enquiry into it, was already closed and awarded accordingly as no dispute between the same parties and it was published by the Government of India as per Notification dt.19.8.2011, and the aforesaid previous Ref., was adjudicated as No dispute award by the CGIT-cum-Labour Court No.1, Dhanbad. On the other hand, Mr.R.R. Ram, the Ld. Union Representative-cum- Advocate for the workman has failed to respond to it even in a single word.

In view of the aforesaid existent facts between both the parties for the same cause of action, the present Reference is barred by the Principle of Res-judicata. Hence the case is closed as no Industrial Dispute just as unmaintainable.

KISHORI RAM, Presiding Officer

नई दिल्ली, 17 जनवरी, 2014

**का.आ. 438.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.-2, धनबाद के पंचाट (संदर्भ संख्या 60 का 2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-1-2014 को प्राप्त हुआ था।

[सं. एल-20012/112/2011-आई आर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 17th January, 2014

**S.O. 438.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 60/2012) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the Industrial Dispute between the Management of Kusunda Area of M/s. BCCL and their workmen, received by the Central Government on 17-1-2014.

[No. L-20012/112/2011-IR (CM-I)]

M. K. SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

**PRESENT :** SHRI KISHORI RAM, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947.

#### REFERENCE NO. 60 OF 2012

#### PARTIES :

The Vice President,  
Janta Mazdoor Sangh,  
Jhaira, Dhanbad

Vs.

General Manager,  
Kusunda Area of  
M/s. BCCL, Kusunda,  
Dhanbad

#### APPEARANCES :

On behalf of the : Mr. K. N. Singh, Ld. Advocate  
workman/Union

On behalf of the : Mr. U. N. Lal, Ld. Advocate  
Management

State : Jharkhand

Industry: Coal

Dated, Dhanbad, the 17th December, 2013

#### AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/112/2011-IR(CM-I) dt. 06.09.2012.

#### SCHEDULE

“Whether the action of the Management of Khas Kusunda Colliery of M/s BCCL in not regularizing Sri Karim Ansari as Trammer w.e.f. 30.11./13.12.1999 is fair and justified? To what relief is the workman concerned entitled?”

2. Neither Vice President, Janta Mazdoor Sangh, Jhaira, nor workman Karim Ansari appeared nor Written statement-cum-Rejoinder filed on behalf of the workman. Mr. U. N. Lal, the Ld. Advocate for the Management is present. Later on, Mr. K. N. Singh, the Ld. Advocate for the Union/workman presented and submitted that the workman is not at all interested in pursuing the case. Under these circumstances of disinterestedness of the workman, the case is closed and accordingly, an order is passed as “No Industrial Dispute” existent between both the parties.

KISHORI RAM, Presiding Officer

नई दिल्ली, 17 जनवरी, 2014

**का.आ. 439.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.-2, धनबाद के पंचाट (संदर्भ संख्या 42 का 2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-1-2014 को प्राप्त हुआ था।

[सं. एल-20012/252/2003-आई आर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 17th January, 2014

**S.O. 439.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 42/2004) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the Industrial Dispute between the Management of M/s. BCCL and their workman, received by the Central Government on 17-1-2014.

[No. L-20012/252/2003-IR (CM-I)]

M. K. SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2), AT DHANBAD

**PRESENT :** SHRI KISHORI RAM, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I. D. Act., 1947.

#### REFERENCE NO. 42 OF 2004

#### PARTIES :

Joint General Secretary,  
Janta Shramik Sangh, Nunudih,  
Patherdih, Dhanbad

Vs.

Project Officer,  
Lodna Colliery of  
M/s. BCCL, Dhanbad

**APPEARANCES:**

On behalf of the workman/Union : Mr. Nazir Mia  
(the workman)

On behalf of the Management : Mr. D. K. Verma,  
Ld. Advocate

State : Jharkhand Industry : Coal

Dated, Dhanbad, the 20th November, 2013

**AWARD**

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/252/2003-IR(C-I) dt.12.03.2004.

**SCHEDULE**

“Whether the management of Lodna Colliery of M/s. BCCL declaring workman Nazir Mia unfit from service after the accident on 14.10.95 but not giving the appointment of his dependent and other benefit is proper and just. If not, then what relief the workman or his dependent is entitled to.”

2. The present reference came into existence consequent upon its remanding for an afresh adjudication after hearing both the parties as per the Order No.4 dt.13.9.2010 of the Hon'ble High Court of Jharkhand at Ranchi in the W.P.(L) No. 4125/2007, Nazir Mia Vs. Union of India & Ors, setting aside the previous Award dt. 6<sup>th</sup> Jan, 2005 passed as “No dispute” by predecessor P.O. of the Tribunal in the reference. In result, workman Nazir Mia himself in place of the Joint General Secretary, Janta Shramik Sangh, Nunudih, Dhanbad, the initial I.D. raiser as noted in the reference, and the Management of Lodna Colliery of M/s. BCCL appeared and contested the case.

3. The case of workman Nazir Mia as stated in his written statement is that while serving as the Heavy Tyndel under the Management of Lodna Colliery, he met the accident on 14.10.1995 requiring the five major operations of serious nature, out of which for two wrong and defective operations at the C.H.D. (the Central Hospital Dhanbad), he had got its treatment at the C.M.C.H., Vellore (a photo copy of the Accidental Slip-Annexure-1-ineligible). The Management continued the expense of his treatment but not to the last, and treating him not as a disabled person, disagreed to provide an employment to his dependent son Nazim Mia, though in his latter treatment Vellore, setting right to his leg was ruled out, resulting in his being a ‘Disabled’ person which comes within the definition of ‘Handicapped’. The Management stopped to send him to Vellore for one major operation due as 15<sup>th</sup> visit. In order to avoid employment, the management in course of treatment and plaster sent the victim to the Medical Board of BCCL with instruction to declare his “FIT” for duty,

and accordingly intimated him of his fitness for duty, though the report of the Medical Board could never surfaced. All the authorities concerned of Lodna Colliery as well as its Doctor specifically wanted him to grease their palms in order to declare him unfit and he had also paid Rs.5,000 to the Doctor concerned while declaring ‘FIT’ for duty, the Management declared 25% compensation, and showed his attendance form 14.10.1995 as if the injured victim were on duty, whereas he was in Vellore, and he never performed any duty for a single day after the accident.

4. Further the workman alleged his victimization and exploitation at the hands of the O.P./management in various ways. On his first visit to Vellore, the Victim workman was paid Rs.9,000 only out of his sanctioned amount Rs.10,000 after deduction of Rs.1,000 by the concerned clerk at the instruction of the Finance Manager S.K.Dey. Every time the demand of Sri Rajballam Yadav for Rs.500 per Medical Bill for sanction, just as the Clerk Md.Afzal Ansari used to ask for Rs.200 for maintaining the Attendance /Muster Roll and Pay slip, failing which, it resulted in removal of his name from the E.D.P section (Koyla Bhawan) for eight months, for which no wages paid in 1998. Prior to his superannuation on 01.08.2001 though signed by the Project Officer on 3.2.2001, yet delivered one month before (Annexure 3). The Management stopped the payment of wages to the workman as the Accidental action despite having been declared by the I.O.D. for the period of four months from 6.4.2001 to 31.7.2001. Despite declaring the workman as permanently physically Handicapped as per the Certificate issued by the C.M.C.H., Vellore (Annexure 2), he was never paid any compensation, rather was paid less to the tune of 25%. The Management tampered the Service records of the workman, and displayed his superannuation on 01.08.2001. Whereas Sri Nazim Mia, the dependent son of the workman is entitled to an employment on compassionate ground, on account of his (workman's) permanent physical disablement/handicappedness caused by the accident in course of his employment of the Company, as he had been employed in the year 1968 prior to the Nationalization of the Collieries and its taking over by the BCCL/CIL.

5. Whereas the contra pleaded case of the O.P./ Management with categorical denials is that the reference is unmaintainable either in Law or in fact, as the workman retired from service of the Company w.e.f. 01.08.2001 on his superannuation at 60 years. The retired workman is not a workman as defined under Sec.2 (S) of the I.D. Act. No employer-employee relationship exists between the retired employee and the Management. The workman was not declared medically unfit by the Apex Medical Board. The Management has not terminated his service due to medical unfitness. The workman was initially an employee of Lodna Coke Plant as a casual General Mazdoor who was transferred to Lodna Colliery on 4.2.1976. While



working as a Casual General Mazdoor at Lodna Coke Plant, the Identity card and form 'B' Register of Casual Labour were maintained but the date of birth was unmentioned. On the transfer of the workman, his date of birth was not recorded in any records but his date of appointment as 2.7.1973 was recorded.

So as per the policy decision of the Company in the year 1986 regarding the employees whose the date of birth not available in any records-Form B or CMPF, their date of birth was assessed by the Apex Medical Board constituted in the Area. Since his age was unrecorded in any of the statutory Records of the Mine, he was referred to Apex Medical Board on 2.7.1986 for assessment of his age. The Medical Board had assessed his age as 45 years as on 2.7.1986, the workman never disputed it, and accordingly he retired on completion of 60 years of age in the company. The workman in service had met with the Mine accident on '4.10.1995, and was treated at the Company's Hospital, as well as referred to the outside C.M.C.H. Vellore for his treatment. He was sent to the Disability Medical Board of the Company at the Central Hospital, Dhanbad, on 25.11.1999 by which his disability caused by the Mine accident was assessed as 25%. The Medical Board also declared him fit for surface job, and accordingly he was deployed in the Engineering department on surface.

On resumption of his duty in the engineering section on surface on 28.11.1999 as per his report, he continued his duty till the date of his retirement. All the benefits under the provision of N.C.W.A. regarding his dues and other wages during the above period have been paid to him. The NCWA nowhere provides for an employment to the dependent of a retired employee.

6. The O.P./Management in its rejoinder has categorically denial all the allegations of the workman as false and baseless and stated that all possible treatment was provided to the workman by the Hospital of the Company. He was also granted his injury wages during the period of his treatment as per the provision of NCWA. The Certificate has been issued to him for enabling facility extended to the permanent handicapped persons. Normally this type of Certificate is issued by the District Authority as per the recommendation of the treating Medical Officer. But the Doctor of CMCH had not declared him medically unfit for any kind of job.

#### FINDING WITH REASONS

7. In the instant case, WWI Nazir Mia, the petitioner himself on his affidavited chief has been examined.

In view of the terms of the reference, it is an indisputable fact that workman Nazir Mia (WWI) had got the serious accident while on duty on 14.10.1995; and that he got medical treatment and twice operations at the Central Hospital, Dhanbad, as well as at C.M.C.H., Vellore on his reference at the cost of the management; The workman in cross has admitted to have undergone the

Medical Board at the initiation of the Officer of the management; factually the Medical Board found him 25% disabled; and fit for the surface duty; the Management did not give him any document to stop his duty which he performed up to 60 years. It is also indisputable that on his superannuation (on 01.08.2001), he got his gratuity of Rs. 70,000 and provident fund.

The Oral statement of the workman (WWI) in his very chief para, I affirms that he has not any grievance against the present officials except the fact that he is in need of one employment to his dependent son Nazim Mia.

The claim of the workman for employment of his dependent son appears to be based on him having been declared "Permanently Physically Disable" by the C.M.C.H., Vellore, which is unacceptable in the present case.

8. Mr. D. K. Verma, the Learned Counsel for the O.P./Management has contended that admittedly due to his 25% declared hurt, he was allowed to continue his work, and accordingly retired, so there is no provision for an employment to a dependent son of the workman who has retired.

9. On perusal and consideration of the materials on the record, I find that the present reference is not the case of permanently disabledness related to the workman. Now where the N.C.W.A. provides for an employment of a dependent son of the workman who has availed of all the benefits including his injury wages, and retirement.

In result, it is responded in the terms of the reference, and accordingly hereby.

#### ORDERED

The Award be and the same is the Management of Lodna Colliery of M/s. B.C.C.L. has never declared workman Sri Nazir Mia unfit for service after his accident on 14.10.1995. Not giving an employment by the Management to his dependent son Nazim Mia and other benefits is quite proper and justified. Hence neither the workman nor his dependent is entitled to any relief.

KISHORI RAM, Presiding Officer

नई दिल्ली, 17 जनवरी, 2014

**का.आ. 440.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार चीफ एग्जीक्यूटिव नुक्लेअर फ्यूल डिपार्टमेंट ऑफ एटॉमिक एनर्जी, हैदराबाद के प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 7/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-1-2014 को प्राप्त हुआ था।

[सं. एल-42012/03/2014-आई आर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी



New Delhi, the 17th January , 2014

**S.O. 440.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 7/2006) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the Management of Chief Executive, Nuclear Fuel Complex, Department of Atomic Energy, Hyderabad and their workman, which was received by the Central Government on 13-1-2014.

[No. L-42012/03/2014-IR (DU)]

P. K. VENUGOPAL, Section Officer

# **ANNEXURE**

## **BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD**

**Present :** Smt. M. Vijaya Lakshmi, Presiding Officer

Dated the 30<sup>th</sup> day of August, 2013

### **INDUSTRIAL DISPUTE L.C.No. 7/2006**

#### **Between :**

Smt. E. Ratnamma,  
W/o Manikya Rao,  
R/o H.No.6-98/2,  
Baba Nagar, Nacharam,  
Hyderabad

....Petitioner

AND

Chief Executive,  
Nuclear Fuel Complex,  
Department of Atomic Energy,  
Hyderabad – 500 062

....Respondent

#### **Appearances :**

For the Petitioner : M/s. G. Ravi Mohan, G. Nareresh  
Kumar, Vikas Sharma, K. Bhaskar  
& G. Pavan Kumar, Advocates

For the Respondent: Sri K. Suryanarayana, Advocate

### **AWARD**

This is a petition filed invoking Sec.2A(2) of Industrial Disputes Act, 1947 by the Petitioner who is claiming to be the person who worked as sweeper in the Respondent unit seeking for setting aside the oral termination of services dated 23.10.1998 by the Respondent consequently to direct the Respondent to reinstate the Petitioner into service with continuity of service, back wages and all other attendant benefits.

#### **2. The averments made in the petition in brief are as follows:**

Petitioner worked as Sweeper in the Respondent unit w.e.f. 1.5.1992 along with other similarly situated

persons. Petitioner was engaged for cleaning, sweeping, dusting, watching of bend dumps. This work is perennial nature. Petitioner was working directly under the control of the Respondent and the salary of the Petitioner is being paid directly by the Respondent. However, Respondent brought non-existing contractor between the Petitioner and the Respondent, to show that there is no master and servant relationship between them. The Central Government, exercising the power under Sec.10 of Abolition of Contract Labour Act on the basis of the recommendations and in conciliation with the Central Advisory Board constituted under Sec.10 (1) of the said act issued notification dated 9.12.1976 prohibiting employment of contract labourers in respect of cleaning sweeping, dusting and watching of the building owned by or occupied by the establishment in respect of which the appropriate government under the said act is the Central Government. Petitioner's job is cleaning and sweeping. Once engaging contract labourers for said job is abolished, there is an obligation for the Respondent to consider regularising the Petitioner and similarly placed persons basing on the availability of vacancies. Even as per the mandate of the Apex Court it is the statutory obligation of the Principal Employer to absorb the contract labourer once the contract labour is abolished and to treat them as regular employees. It is the statutory obligation under Sections 11, 19 and 20 of the Factories Act to maintain cleanliness of the area in which the factory is situated. Respondent company is a factory. Even as per the condition contained in format of the license under Contract Labour Regulation and Abolition Act, Petitioner is entitled for regular pay of the minimum wages prescribed by the Government. Initially Petitioner was paid Rs.25 per day. Subsequently it was enhanced to Rs. 45 per day. Petitioner worked from May, 1992 to October, 1998 continuously without any break in service. Petitioner along with other similarly situated persons filed WP No.29210 of 1998 before the Hon'ble High Court of A.P. for absorbing as a regular employee and to pay other benefits on par with other employees. During the pendency of the said Writ petition, Petitioner was terminated from the service in the month of October, 1998 and the writ petition was allowed by an order dated 25.9.2000. Against the said order WA No. 1602/1999 was filed by the Respondent before the Division Bench of the Hon'ble High Court of A.P. The said appeal was allowed on 23.2.2001. Against the said order Petitioner filed Special Leave to Appeal (Civil) No.13451/2001 before the Hon'ble Supreme Court of India and the same was withdrawn with a liberty to raise industrial dispute before the appropriate forum on 9.11.2001. Thus, the Petitioner raised the dispute. The premises of the Respondent including the residential quarters of the officers of the Respondent is in the same campus, i.e., within the premises of the Respondent. Cleaning activities of the Respondent quarters which includes, roads and maintenance of the buildings is to be

taken care off by the Respondents only. An officer from the civil department used to take care of the work in respect of cleaning and maintenance of the factory buildings including the residential quarters. No work was entrusted to any outsider at any point of time i.e., contractor. Respondent used to maintain details of casual labourers, who were entrusted with the works of cleaning, gardening, civil works etc., which are perennial in nature. Petitioner was deputed to work as sweeper. Respondent never issued any appointment letter. However, salary was being paid by the Respondent Management on monthly basis. Attendance register and wages register were maintained by the Respondent and the same are in their custody. Respondent used to take the signature of the Petitioner in the wage register every month while paying salary in cash. There was no contract given to any contractor who is in between Respondent and Petitioner. In view of the notification issued by the Central Government. Respondent should not engage any contract labour. Admittedly, Petitioner is an uneducated woman and she has been exploited by the Respondent by paying less than minimum wages and terminating her services abruptly without any notice consequent to her filing WP before the Hon'ble High Court of A.P. and without following the procedure contemplated under Industrial Disputes Act, 1947 as well as Contract Labour Regulation and Abolition Act. There is violation of the provisions of Sec.25F of Industrial Disputes Act, 1947. Petitioner is the only earning member of her family and consequent to illegal termination of her services it has become difficult to eak out livelihood of her family.

### **3. Respondent filed his counter with the averments in brief as follows:**

Petitioner is supposed to approach Hon'ble Central Administrative Tribunal. Which has the requisite jurisdiction over the service matters as held by the Hon'ble Supreme Court of India in the case of Chandra Kumar Vs. Union of India and in view of the direction given in WP No.5592 of 1991 filed by Sri Kewal Singh and 17 others vide order dated 22.4.1991. Petitioner's claim is barred by limitation as services of the Petitioner said to have been terminated way back in 1995 as the contract entered into with Sri P. Narasimha, the contractor, Respondent No.2 in WP No.29210/1998 expired by 30.6.1995. On this ground also petition is not maintainable. The Nuclear Fuel Complex has constructed manufacturing plants and administrative buildings with separate enclosures and the ingress and egress of this premises is guarded by Central Industrial Security Force of Ministry of Home Affairs. In so far as housing colony spreading in an area of 260 acres is concerned, watch and ward is taken care of by a security agency. Without any restriction for the entry in the colony by the general public for the purpose of visit the residents of the colony. The over all control including allotment of quarters vests with the Estate Officer, NFC. It is necessary

to pay taxes which include service charges in respect of the said colony and it has termed within the jurisdiction of the KAPRA municipality. Since service charges running into lakhs of rupees have been paid to Kapra Municipality which facilitated the Respondent approaching them for taking up the house keeping jobs in DAE colony. The house keeping works of DAE housing colony is being taken care of by Kapra municipality. The requirement is being met through helpers deployed by such persons. Making such arrangements on the deployment of helpers a running contract for a period of 12 months executing urgent works such as jungle cutting in the sprawling Nuclear Fuel Complex, cleaning of storm water drains and clearance of garbage on roads vide letter dated 30.9.1997. Similar contract was in existence in DAE housing colony where some contract labourers were also engaged. Petitioner is one among the labourers engaged by the contractor who was awarded the work of cleaning of roads and storm water drains in housing colony. Her engagement is not within the knowledge and control of the Respondent at any time. It was outside the scope of the notification dated 9.12.1976 issued by the Central Government. There was no scope for direct payment by the Respondent to the Petitioner at any point of time. Petitioner filed WP No. 29210 of 1998 seeking for regularization of her services along with others. By virtue of order dated 22.10.1998 in WPMP 35709 of 1998 Hon'ble High Court of A.P. was pleased to direct that the position shall be maintained till further orders if the Petitioners were in service as on that date. Ultimately by virtue of order dated in WP 29210 of 1998 regularization of the services of the Petitioner among others was ordered. Respondents preferred WA No.1602/2000 which was allowed vide order dated 22.3.2001. Whereunder, the impugned judgement dated 25.9.2000 in WP No.29210 of 1998 has been set aside. Having maintained silence for a period of more than 5 years Petitioner approached this Tribunal now. It is a belated claim. Statement of the Petitioner that the work done by her was perennial in nature was denied. It was a stop gap arrangement prior to approach the Municipal Authorities of Kapra for taking assistants. Petitioner never worked directly under the control of the Respondent and salary paid to her by the Respondent is outrightly denied. The engagement of the Petitioner by a contractor was outside the scope of notification dated 9.12.1976 issued by the Central Government under Contract Labour (R & A) Act, 1970. Petitioner's employer was not having any contractual obligation with her as on the date of issuance of the notification dated 9.12.1976. As per the mandate of Hon'ble Apex Court only those contract labourers who were working at the time of issuance of the said notification could be directed to be absorbed in the establishment of the Principal Employer. Petitioner was not a casual labourer on the rolls of the Respondent. Even otherwise as per the mandate of Hon'ble Apex Court casual labourers employed on temporary works are not entitled for

regularization for absorption as it amounts to back door entries into service on the basis of completion of 240 days of work and the appointment to the service has to be made in accordance with the statutory rules and guidelines thereunder. Contract labourers are not entitled to the same pay scales as of the regular employees. The residential quarters are not within factory premises. Petitioner never directly engaged by the Respondent and she was never exploited. Petitioner rendered service as a contract labourer with a contractor. She can not claim for regularization of her services. In the writ proceedings for the similar cause of action, litigation was launched seeking for same relief in this proceedings is hit by res judi cata. Petition is liable to be dismissed.

4. To substantiate the contentions of the Petitioner WW1 was examined and Exhibits W1 to W8 are marked. While WW1 evidence was in progress and by virtue of the orders dated 17.3.2009, i.e., L.C. Nos. 2 to 8/2006 including this case are clubbed with L.C. 1/2006 in pursuance of the memo filed by the Petitioner and it has been ordered that evidence is to be adduced in LC 2/2006. Accordingly in respect of all these cases i.e., LC 1 to 8 of 2006, Smt. B. Lakshmi, Petitioner in L.C. 2/2006 alone has been cross examined on behalf of respondents, though separate chief examination affidavits of WW1 have been filed in all these cases. Further more, Respondent's evidence has been adduced in all these cases separately by examining MW1 and Management marked Ex.M1 to M8 in each case and arguments are also advanced in all these cases and Respondent has filed his written arguments in all these cases separately. In the given circumstances and for the sake of effective disposal of all these cases awards are being passed in all these cases separately and individually.

5. Heard the arguments of either party and written arguments of either party are also filed and they are considered.

**6. The points that arise for determination are:**

1. Whether this dispute is not maintainable before this tribunal for want of jurisdiction?
2. Whether this dispute is barred by limitation?
3. Whether the proceedings in writ petition No.29210 of 1998 operate as res judi cata?
4. Whether there is no relationship of workman and Management between the Petitioner and Respondent?
5. Whether there is termination of the service of the Petitioner by the Respondent through oral termination order dated 23.10.1998? If so, whether the said order is liable to be set aside?
6. To what relief Petitioner is entitled?

**7. Point No. 1:**

There is no dispute as to the fact that Petitioner is a workman and Respondent is an industry. But, Respondent is contending that this tribunal can not entertain this case for the reason, that as held in the case of Sri Chandra Kumar vs. Union of India (AIR 1997 SC 1125) Petitioner is supposed to have his legal recourse from the Central Administrative Tribunal. This contention can not be accepted as a correct contention. It is undoubtedly an industrial dispute and the Respondent is admittedly a Central Government organisation. This forum is Central Government Industrial Tribunal cum Labour Court whose function is to decide the industrial disputes arising from the industries which are Central Government undertakings. All the industrial disputes which arose within the jurisdiction of this tribunal and which concern with the Central Government organisations Central Government undertakings, are to be decided by this forum only as per the powers conferred on this tribunal. As to the Central Administrative Tribunal is concerned, all the service and administration related disputes pertaining to the officers and employees of all the Central Government offices, organisations and undertakings are to be dealt with by the said forum. Since the present dispute is an industrial dispute raised under Sec.2A(2) of Industrial Disputes Act, 1947, this tribunal got every jurisdiction to entertain this dispute.

This point is answered accordingly.

**8. Point No. 2 :**

It is the contention of the Respondent that present dispute is barred by limitation for the reason that Petitioner filed this petition five years after the Hon'ble High Court of A.P. decided WA No.1602/2000 in WP No.29210 /1998 by virtue of judgement dated 22.3.2001. In this regard, it can clearly be seen that there is no consonance between the writ proceedings and filing of this industrial dispute before this court. Further more, as on the date of filing of the present petition, no limitation was prescribed for preferring industrial disputes in the Industrial Disputes Act, 1947. Only recently i.e., in the year 2010 limitation has been prescribed for preferring industrial disputes invoking Sec. 2A(2) of Industrial Disputes Act, 1947 by enacting Sec. 2A(3) of the said act. Thus, as on the relevant date, there was no prescription of period of limitation for preferring industrial disputes. It is not for the courts to prescribe any period of limitation. When the Act is silent as to the question of limitation, the courts are bound to entertain the cases, without looking into the belatedness or otherwise in filing the same, as it is the duty of the courts to interpret and implement the law enacted by the parliament only, but not to substitute or incorporate any new law. In the given circumstances, it is to be held that this petition is not barred by limitation.

This point is answered accordingly.



**9. Point No. 3 :**

The writs filed invoking the extraordinary jurisdiction of the Constitutional Courts provided under Article 226 of Constitution of India will never act as *res judicata* for the cases filed before the civil courts and tribunals which are clothed with ordinary jurisdiction by the various enactments. This tribunal is clothed with the ordinary jurisdiction to entertain industrial disputes. Whereas while preferring writs before Hon'ble High Court of A.P. the Petitioner has invoked extra ordinary jurisdiction provided under Article 226 of Constitution of India. Further more, Petitioner and others have withdrawn the special leave petition filed by them challenging the judgement dated 22.3.2001 rendered in the rendered by Hon'ble High Court of A.P. in WA No.1602/2000 only to raise an industrial dispute and said withdrawal has been accepted by Hon'ble Supreme Court of India, as can be seen in Ex.W3 the order rendered in Special Leave to Appeal (Civil) No.13451/2001.

10. Further more, the writ proceedings were launched by the Petitioner and other similarly placed persons seeking for regularisation of their services with the Respondent. Whereas, the present industrial dispute is raised by the Petitioner, consequent to termination of her services while the writ appeal was pending, seeking for setting aside the oral termination order dated 23.10.1998 of the Respondent, whereunder Petitioner's services were terminated consequently directing the Respondent to reinstate the Petitioner into service with attendant benefits. Therefore, cause of action for filing the writ proceeding and for raising the present industrial dispute and also nature of these two proceedings are totally different and distinct.

11. In the given circumstances, it can safely be held that the proceedings of WP No. 29210/1998 will not act as *res judicata* for the present proceedings.

This point is answered accordingly.

**12. Point No. 4 :**

Admittedly, Petitioner has worked with the Respondent organisation. It can be said so since, in their counter Respondent has not disputed regarding the fact that Petitioner has worked with them.

13. It is the contention of the Petitioner that she has been engaged by the Respondent for cleaning, sweeping, dusting, watching bend dumps, the work, nature of which is perennial and that the Petitioner was working directly under the control of the Respondent receiving salary directly from the Respondent but however, Respondent brought non-existing contractor between the Petitioner and Respondent to show that there is no master and servant relationship between them.

14. Whereas, Respondent is contending that house keeping works in DAE housing colony, in which the staff of the Respondent unit are housed, is being taken care of

by CAPRA municipality, whereas requirement of plant of the Respondent is being met through helpers (COS) deployed for the said purpose, however, prior to making this arrangements through CAPRA municipality and / or deployment of helpers (COS) a running contract for a period of 12 months was awarded for executing urgent works such as, jungle cutting in the NFC works as well as DAE Housing colony, where some contract labourers were engaged and that Petitioner is one among the labourers engaged by the contractor who was awarded with the work of cleaning of roads and storm water drains in housing colony.

15. From the above contention and counter contention of the Petitioner and Respondent, what one can gather is, that admittedly Petitioner has been working for the Respondent unit, and she was awarded with the work of cleaning of the premises, but it is the contention of the Respondent, contrary to the contentions of the Petitioner, that Petitioner has been a contract labourer engaged by the contractor to whom the cleaning work was entrusted by the Respondent but not a person directly engaged by the Respondent.

16. When once Respondent accepted the fact that Petitioner has worked with him but claimed that there is an intermediary between them i.e., a contractor, it is for the Respondent to establish before the court that there has been such contractor and the said contractor engaged the Petitioner for cleaning work entrusted to her by the Respondent. Further more, it is to be verified by the court, if it is established before the court that there has been such a contractor, whether the principal employer i.e., the Respondent was exercising control over the functioning of the Petitioner or whether through the contractor only the work was being done. Who is exercising control over the conditions of the service of the Petitioner is a crucial aspect to decide whether there is master and servant relationship between the principal employer and the workman or whether the alleged contractor himself remained as a master for the workman and other such relevant aspects. In this regard, it is well established legal principle that "the Industrial Tribunal/court will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere rule/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer." This is the legal principle laid down by the Hon'ble Supreme Court of India in the case of Steel Authority of India and ors. Vs. National Union Waterfront Workers and Others[(2001) 7 SCC page 1], which is relied upon by Learned Counsel for the Respondent himself.

17. All the above referred crucial aspects in this case can be gathered from the relevant record maintained by the Respondent in connection with the alleged contract entrusted to the contractor regarding the way in which the work was extracted from the Petitioner and other workers and also the mode of payment of wages to the Petitioner and other workmen and other related aspects. It is the burden of the Respondent to place all the relevant record before this tribunal. But the only record produced by the Respondent regarding the alleged contract is Ex. M4, the letter dated 30.9.97 said to have been issued by the Respondent to one Sri P. Ramana Reddy a contractor. There is no record to show that Respondent called for tenders for given contract work and selected any persons as contractors through any selection process. While she was under cross examination MW1 had admitted that they have not filed any document to show that contractor was engaged or agreement was entered between contractor and Management.

18. Further, in Ex. M4 it is averred that "A daily report indicating the details of labourers and vehicle engaged on the work for each day shall be submitted to the Engineer-in-charge, before 10.00 AM on every working day. Payment of wages to contract labourers shall be as per regulations laid down in CPWD contractors labour regulation to be applicable to Nuclear Fuel Complex. Intimation regarding wage period, date of payment, place and time of disbursement shall be given to the Engineer-in-charge within 2 (two) weeks from the date of issue of this order". If the work was done in furtherance of Ex. M4 order, in every likelihood the daily report indicating details of labourers and vehicles engaged for the work, would have been submitted by the contractor to the Engineer-in-charge on every working day and further intimation regarding the wage period date of payment, place and time of disbursement of wages also would have been given to the Engineer-in-charge and such documents will be available with the Respondent. But no such documents are placed before the court which indicates that there are no such documents and therefore Ex.M4 has never been acted upon.

19. In the absence of proper proof of the fact that Petitioner has been a labourer worked under a contractor but not a direct employee of the Respondent, it is to be taken that she is the direct employee of the Respondent for the reason that it is an admitted fact that Petitioner worked for the Respondent as a sweeper. It can be taken that there is no proper proof of the contentions of the Respondent that Petitioner has been working under a contractor, for the above referred reason that Respondent failed to produce that all the relevant documents which will certainly will be in their custody, if actually Petitioner has been working under a contractor to whom the Respondent entrusted the cleaning of the premises as a contract work. Therefore, it can safely be held that

Respondent failed to establish that Petitioner has been working under a contractor who has been entrusted with the job of cleaning of their premises but not their direct employee.

20. In view of the foregone discussion it can safely be held that there is relationship of workman and Management between the Petitioner and the Respondent which indicates that there is master and servant relationship between them.

This point is answered accordingly.

#### 21. Point No. 5 :

As can be gathered from the line of the defence taken in this case by the Respondent and the arguments built up and advanced for them, what one can see is that they are meeting the claim of the Petitioner, as if the Petitioner is seeking for regularization of services. But the fact remains that Petitioner is seeking for setting aside the order under which Petitioner's services were terminated and for reinstatement into service and other consequential reliefs. In the writ proceedings Petitioner sought for regularization of service but while writ appeal was pending disposal, as the Petitioner's services were terminated, this industrial dispute is raised seeking for setting aside the said termination order and consequential reinstatement of the Petitioner into service and for grant of other attendant benefits. Ignoring these aspects Respondent is advancing their arguments regarding the claim of the Petitioner in the writ proceedings for regularization of services. The said arguments are to be taken as not helpful for the proceedings of this case. The various legal precedents cited for the Respondent are also not helpful for furtherance of this case as they are all in respect of the regularization of the services of the contract employees. In this case, the relief sought for is not for regularization of service but it is for reinstatement into service. But in this case also the question whether Petitioner has been a contract labourer or other wise is to be decided and it has been decided while deciding Point No. 4 alone.

22. Evidently, Respondent ceased to take services of the Petitioner since 23.10.1998. In their counter the Respondent has chosen to plead that the contractor has terminated the services of the Petitioner in the year 1998 but as discussed above while deciding point No. 4 Respondent failed to establish that there has been a contractor as an intermediary between them and the Petitioner. Thus, it can safely be inferred that Respondent is the organization which terminated the services of the Petitioner.

23. It is claim of the Petitioner that said termination is by way of an oral order and therefore, it is not possible for the Petitioner to produce any termination order. But the fact remains that even as per contentions of the Respondent they ceased to take the services of the Petitioner since the year 1998. Therefore, it can reasonably

be accepted that there has been oral termination of the Petitioner with effect from 23.10.1998.

24. It is well established principle of law that every termination spells retrenchment. With this regard there is no dispute.

25. Sec. 25F of the Industrial Disputes Act, 1947 deals with conditions precedent to retrenchment of workman. Sec. 25 F reads as follows:-

“25-F: Conditions precedent to retrenchment of workmen:- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice.
- (b) The workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and
- (c) Notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].”

26. As can be gathered from the facts on record, Petitioner worked for one year continuously even as per the contentions of the Respondent, leaving alone the contentions of the Petitioner that she has been in continuous service with the Respondent since years together which has not been disproved by producing the record maintained by the Respondent regarding the service of the Petitioner with the Respondent. Therefore, it can safely be held that Petitioner comes under the purview of the workman mentioned in Sec. 25F by working with the Respondent for not less than one year. As per Sec. 25F such a workman can not be retrenched, until he has been given one month's notice in writing indicating the reasons for retrenchment and only after expiry of the period of notice or otherwise by making payment of wages in lieu of such notice for the period of notice. Further more, the workman has to be paid retrenchment compensation as mentioned in Sec. 25F (b) and there shall be compliance of Sec. 25F (c).

27. Unless there is compliance of all the above mentioned mandatory pre requisites the retrenchment of the workman is to be held as null and void, illegal and inoperative, as per the well established legal principles

laid down by Hon'ble the Apex Court. In the case of Devinder Singh Vs. Municipal Council, Sanaur, [(2011) 6 SCC page 584] and in the case of Anup Sharma Vs. Public Health Division [(2010) 5 SCC 497] Hon'ble Supreme Court of India considered the effect of violation of Sec. 25F and held that termination of service of a workman without complying with the mandatory provisions contained under Sec. 25F (A) and (B) should ordinarily result in his reinstatement.

28. In the present case, evidently there is no compliance of the mandatory pre-requisites contemplated under Sec. 25F (a) and (b) of Industrial Disputes Act, 1947. Therefore, the impugned termination order is bad and is liable to be set aside and Petitioner is entitled for reinstatement into service.

This point is answered accordingly.

#### 29. Point No.6 :

In view of the findings given in Point No. 5 above, the impugned oral termination order dated 23.10.1998 is liable to be set aside. Consequently Petitioner is entitled for reinstatement into service as Sweeper with continuity of service. Considering the way in which the Petitioner's services were terminated while the writ proceedings launched by the Petitioner seeking for regularization is pending, it can safely be held that Petitioner is entitled for all back wages, and all other attendant benefits.

This point is answered accordingly.

#### 30. Result :

In the result, petition is allowed. The oral order dated 23.10.1998 of the Respondent terminating the services of the Petitioner is hereby set aside. Petitioner shall be reinstated into service forthwith. Respondent shall pay back wages to the Petitioner for the period from 23.10.1998 the date of termination of her services till the date of the Petitioner's reinstatement into service. Petitioner is entitled for all other consequential benefits as well.

Award passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant corrected by me on this the 30<sup>th</sup> day of August, 2013.

M. VIJAYA LAKSHMI, Presiding Officer

#### Appendix of evidence

Witnesses examined for : Witnesses examined for  
the Petitioner the Respondent

WW1: Smt E. Ratnamma MW1 : Smt. A. Rama Devi

#### Documents marked for the Petitioner

Ex.W1: Photostat copy of order in WP No. 29210/1998  
dt. 25.9.2000

Ex.W2: Photostat copy of representation dt.11.4.98



- Ex.W3: Photostat copy of order in SLA (Civil) Np.13451/2001
- Ex.W4: Photostat copy of representation dt. 3.5.96
- Ex.W5: Photostat copy of provisional receipt from Kapra Municipality dt.13.11.98
- Ex.W6: Photostat copy of representation dt. 9.10.98
- Ex.W7: Photostat copy of order in WA No. 1602/1999
- Ex.W8: Photostat copy of representation dt. 28.9.2005

**Documents marked for the Respondent**

- Ex.M1: Photostat copy of order in WP No. 5592/1991
- Ex.M2: Photostat copy of receipt from Kapra Municipality dt.13.11.98
- Ex.M3: Photostat copy of letter dt. 9.1.1999 issued by NFC to Commissioner, Kapra Municipality.
- Ex.M4: Photostat copy of letter dt. 30.9.97 issued by NFC to Sri P. Ramana Reddy, Contractor
- Ex.M5: Photostat copy of order in contempt case No.1903/98
- Ex.M6: Photostat copy of order in WP No. 29210/1998 dt. 25.9.2000
- Ex.M7: Photostat copy of order in WA No.1602/1999
- Ex.M8: Photostat copy of receipt from Kapra Municipality dt.1.1.1999

नई दिल्ली, 17 जनवरी, 2014

**का.आ. 441.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार चीफ एग्जीक्यूटिव न्यूक्लियर फ्यूल काम्प्लेक्स डिपार्टमेंट ऑफ एटॉमिक एनर्जी, हैदराबाद के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 8/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-1-2014 को प्राप्त हुआ था।

[सं. एल-42012/03/2014-आई आर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 17th January, 2014

**S.O. 441.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 8/2006) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the Management of Chief Executive, Nuclear Fuel Complex, Department of Atomic Energy, Hyderabad and their workman, which was received by the Central Government on 13-1-2014.

[No. L-42012/03/2014-IR (DU)]

P. K. VENUGOPAL, Section Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT  
HYDERABAD**

**PRESENT :** Smt. M. Vijaya Lakshmi, Presiding Officer

Dated the 30<sup>th</sup> day of August, 2013

**INDUSTRIAL DISPUTE L.C. No. 8/2006**

**Between :**

Smt. B. Savitri,  
D/o Somaiah,  
R/o H. No. 3-17-16,  
Chinna Kamala (V), Lal Bazar,  
Tirumalagiri, Secunderabad ....Petitioner  
AND

Chief Executive,  
Nuclear Fuel Complex,  
Department of Atomic Energy,  
Hyderabad – 500 062 ....Respondent

**Appearances :**

For the Petitioner : M/s. G. Ravi Mohan, G. Nararsh  
Kumar, Vikas Sharma, K. Bhaskar  
& G. Pavan Kumar, Advocates

For the Respondent: Sri K. Suryanarayana, Advocate

**AWARD**

This is a petition filed invoking Sec.2A(2) of Industrial Disputes Act, 1947 by the Petitioner who is claiming to be the person who worked as sweeper in the Respondent unit seeking for setting aside the oral termination of services dated 23.10.1998 by the Respondent consequently to direct the Respondent to reinstate the Petitioner into service with continuity of service, back wages and all other attendant benefits.

**2. The averments made in the petition in brief are as follows:**

Petitioner worked as Sweeper in the Respondent unit w.e.f. 1.5.1992 along with other similarly situated persons. Petitioner was engaged for cleaning, sweeping, dusting, watching of bend dumps. This work is perennial nature. Petitioner was working directly under the control of the Respondent and the salary of the Petitioner is being paid directly by the Respondent. However, Respondent brought non-existing contractor between the Petitioner and the Respondent, to show that there is no master and servant relationship between them. The Central Government, exercising the power under Sec.10 of Abolition of Contract Labour Act on the basis of the recommendations and in conciliation with the Central Advisory Board constituted under Sec.10 (1) of the said act issued notification dated 9.12.1976 prohibiting employment of contract labourers in respect of cleaning

sweeping, dusting and watching of the building owned by or occupied by the establishment in respect of which the appropriate government under the said act is the Central Government. Petitioner's job is cleaning and sweeping. Once engaging contract labourers for said job is abolished, there is an obligation for the Respondent to consider regularising the Petitioner and similarly placed persons basing on the availability of vacancies. Even as per the mandate of the Apex Court it is the statutory obligation of the Principal Employer to absorb the contract labourer once the contract labour is abolished and to treat them as regular employees. It is the statutory obligation under Sections 11, 19 and 20 of the Factories Act to maintain cleanliness of the area in which the factory is situated. Respondent company is a factory. Even as per the condition contained in format of the license under Contract Labour Regulation and Abolition Act, Petitioner is entitled for regular pay of the minimum wages prescribed by the Government. Initially Petitioner was paid Rs.25/- per day. Subsequently it was enhanced to Rs. 45/- per day. Petitioner worked from May, 1992 to October, 1998 continuously without any break in service. Petitioner along with other similarly situated persons filed WP No.29210 of 1998 before the Hon'ble High Court of A.P. for absorbing as a regular employee and to pay other benefits on par with other employees. During the pendency of the said Writ petition, Petitioner was terminated from the service in the month of October, 1998 and the writ petition was allowed by an order dated 25.9.2000. Against the said order WA No. 1602/1999 was filed by the Respondent before the Division Bench of the Hon'ble High Court of A.P. The said appeal was allowed on 23.2.2001. Against the said order Petitioner filed Special Leave to Appeal (Civil) No.13451/2001 before the Hon'ble Supreme Court of India and the same was withdrawn with a liberty to raise industrial dispute before the appropriate forum on 9.11.2001. Thus, the Petitioner raised the dispute. The premises of the Respondent including the residential quarters of the officers of the Respondent is in the same campus, i.e., within the premises of the Respondent. Cleaning activities of the Respondent quarters which includes, roads and maintenance of the buildings is to be taken care off by the Respondents only. An officer from the civil department used to take care of the work in respect of cleaning and maintenance of the factory buildings including the residential quarters. No work was entrusted to any outsider at any point of time i.e., contractor. Respondent used to maintain details of casual labourers, who were entrusted with the works of cleaning, gardening, civil works etc., which are perennial in nature. Petitioner was deputed to work as sweeper. Respondent never issued any appointment letter. However, salary was being paid by the Respondent Management on monthly basis. Attendance register and wages register were maintained by the Respondent and the same are in their custody. Respondent used to take the signature of the Petitioner in

the wage register every month while paying salary in cash. There was no contract given to any contractor who is in between Respondent and Petitioner. In view of the notification issued by the Central Government. Respondent should not engage any contract labour. Admittedly, Petitioner is an uneducated woman and she has been exploited by the Respondent by paying less than minimum wages and terminating her services abruptly without any notice consequent to her filing WP before the Hon'ble High Court of A.P. and without following the procedure contemplated under Industrial Disputes Act, 1947 as well as Contract Labour Regulation and Abolition Act. There is violation of the provisions of Sec.25F of Industrial Disputes Act, 1947. Petitioner is the only earning member of her family and consequent to illegal termination of her services it has become difficult to eak out livelihood of her family.

### **3. Respondent filed his counter with the averments in brief as follows:**

Petitioner is supposed to approach Hon'ble Central Administrative Tribunal. Which has the requisite jurisdiction over the service matters as held by the Hon'ble Supreme Court of India in the case of Chandra Kumar Vs. Union of India and in view of the direction given in WP No.5592 of 1991 filed by Sri Kewal Singh and 17 others vide order dated 22.4.1991. Petitioner's claim is barred by limitation as services of the Petitioner said to have been terminated way back in 1995 as the contract entered into with Sri P. Narasimha, the contractor, Respondent No.2 in WP No.29210/1998 expired by 30.6.1995. On this ground also petition is not maintainable. The Nuclear Fuel Complex has constructed manufacturing plants and administrative buildings with separate enclosures and the ingress and egress of this premises is guarded by Central Industrial Security Force of Ministry of Home Affairs. In so far as housing colony spreading in an area of 260 acres is concerned, watch and ward is taken care of by a security agency. Without any restriction for the entry in the colony by the general public for the purpose of visit the residents of the colony. The over all control including allotment of quarters vests with the Estate Officer, NFC. It is necessary to pay taxes which include service charges in respect of the said colony and it has termed within the jurisdiction of the KAPRA municipality. Since service charges running into lakhs of rupees have been paid to Kapra Municipality which facilitated the Respondent approaching them for taking up the house keeping jobs in DAE colony. The house keeping works of DAE housing colony is being taken care of by Kapra municipality. The requirement is being met through helpers deployed by such persons. Making such arrangements on the deployment of helpers a running contract for a period of 12 months executing urgent works such as jungle cutting in the sprawling Nuclear Fuel Complex, cleaning of storm water drains and clearance of garbage on roads vide letter dated

30.9.1997. Similar contract was in existence in DAE housing colony where some contract labourers were also engaged. Petitioner is one among the labourers engaged by the contractor who was awarded the work of cleaning of roads and storm water drains in housing colony. Her engagement is not within the knowledge and control of the Respondent at any time. It was outside the scope of the notification dated 9.12.1976 issued by the Central Government. There was no scope for direct payment by the Respondent to the Petitioner at any point of time. Petitioner filed WP No. 29210 of 1998 seeking for regularization of her services along with others. By virtue of order dated 22.10.1998 in WPMP 35709 of 1998 Hon'ble High Court of A.P. was pleased to direct that the position shall be maintained till further orders if the Petitioners were in service as on that date. Ultimately by virtue of order dated in WP 29210 of 1998 regularization of the services of the Petitioner among others was ordered. Respondents preferred WA No.1602/2000 which was allowed vide order dated 22.3.2001. Whereunder, the impugned judgement dated 25.9.2000 in WP No.29210 of 1998 has been set aside. Having maintained silence for a period of more than 5 years Petitioner approached this Tribunal now. It is a belated claim. Statement of the Petitioner that the work done by her was perennial in nature was denied. It was a stop gap arrangement prior to approach the Municipal Authorities of Kapra for taking assistants. Petitioner never worked directly under the control of the Respondent and salary paid to her by the Respondent is outrightly denied. The engagement of the Petitioner by a contractor was outside the scope of notification dated 9.12.1976 issued by the Central Government under Contract Labour (R & A) Act, 1970. Petitioner's employer was not having any contractual obligation with her as on the date of issuance of the notification dated 9.12.1976. As per the mandate of Hon'ble Apex Court only those contract labourers who were working at the time of issuance of the said notification could be directed to be absorbed in the establishment of the Principal Employer. Petitioner was not a casual labourer on the rolls of the Respondent. Even otherwise as per the mandate of Hon'ble Apex Court casual labourers employed on temporary works are not entitled for regularization for absorption as it amounts to back door entries into service on the basis of completion of 240 days of work and the appointment to the service has to be made in accordance with the statutory rules and guidelines thereunder. Contract labourers are not entitled to the same pay scales as of the regular employees. The residential quarters are not within factory premises. Petitioner never directly engaged by the Respondent and she was never exploited. Petitioner rendered service as a contract labourer with a contractor. She can not claim for regularization of her services. In the writ proceedings for the similar cause of action, litigation was launched seeking for same relief in this proceedings is hit by res judi cata. Petition is liable to be dismissed.

4. To substantiate the contentions of the Petitioner WW1 was examined and Exhibits W1 to W8 are marked. While WW1 evidence was in progress and by virtue of the orders dated 17.3.2009, i.e., L.C. Nos. 2 to 8/2006 including this case are clubbed with L.C. 1/2006 in pursuance of the memo filed by the Petitioner and it has been ordered that evidence is to be adduced in LC 2/2006. Accordingly in respect of all these cases i.e., LC 1 to 8 of 2006, Smt. B. Lakshmi, Petitioner in L.C. 2/2006 alone has been cross examined on behalf of respondents, though separate chief examination affidavits of WW1 have been filed in all these cases. Further more, Respondent's evidence has been adduced in all these cases separately by examining MW1 and Management marked Ex.M1 to M8 in each case and arguments are also advanced in all these cases and Respondent has filed his written arguments in all these cases separately. In the given circumstances and for the sake of effective disposal of all these cases awards are being passed in all these cases separately and individually.

5. Heard the arguments of either party and written arguments of either party are also filed and they are considered.

**6. The points that arise for determination are:**

1. Whether this dispute is not maintainable before this tribunal for want of jurisdiction?
2. Whether this dispute is barred by limitation?
3. Whether the proceedings in writ petition No.29210 of 1998 operate as res judi cata?
4. Whether there is no relationship of workman and Management between the Petitioner and Respondent?
5. Whether there is termination of the service of the Petitioner by the Respondent through oral termination order dated 23.10.1998? If so, whether the said order is liable to be set aside?
6. To what relief Petitioner is entitled?

**7. Point No. 1:**

There is no dispute as to the fact that Petitioner is a workman and Respondent is an industry. But, Respondent is contending that this tribunal can not entertain this case for the reason, that as held in the case of Sri Chandra Kumar vs. Union of India (AIR 1997 SC 1125) Petitioner is supposed to have his legal recourse from the Central Administrative Tribunal. This contention can not be accepted as a correct contention. It is undoubtedly an industrial dispute and the Respondent is admittedly a Central Government organisation. This forum is Central Government Industrial Tribunal cum Labour Court whose function is to decide the industrial disputes arising from the industries which are Central Government undertakings.

All the industrial disputes which arose within the jurisdiction of this tribunal and which concern with the Central Government organisations Central Government undertakings, are to be decided by this forum only as per the powers conferred on this tribunal. As to the Central Administrative Tribunal is concerned, all the service and administration related disputes pertaining to the officers and employees of all the Central Government offices, organisations and undertakings are to be dealt with by the said forum. Since the present dispute is an industrial dispute raised under Sec.2A(2) of Industrial Disputes Act, 1947, this tribunal got every jurisdiction to entertain this dispute.

This point is answered accordingly.

#### 8. Point No. 2 :

It is the contention of the Respondent that present dispute is barred by limitation for the reason that Petitioner filed this petition five years after the Hon'ble High Court of A.P. decided WA No.1602/2000 in WP No.29210/1998 by virtue of judgement dated 22.3.2001. In this regard, it can clearly be seen that there is no consonance between the writ proceedings and filing of this industrial dispute before this court. Further more, as on the date of filing of the present petition, no limitation was prescribed for preferring industrial disputes in the Industrial Disputes Act, 1947. Only recently i.e., in the year 2010 limitation has been prescribed for preferring industrial disputes invoking Sec.2A(2) of Industrial Disputes Act, 1947 by enacting Sec.2A(3) of the said act. Thus, as on the relevant date, there was no prescription of period of limitation for preferring industrial disputes. It is not for the courts to prescribe any period of limitation. When the Act is silent as to the question of limitation, the courts are bound to entertain the cases, without looking into the belatedness or otherwise in filing the same, as it is the duty of the courts to interpret and implement the law enacted by the parliament only, but not to substitute or incorporate any new law. In the given circumstances, it is to be held that this petition is not barred by limitation.

This point is answered accordingly.

#### 9. Point No. 3 :

The writs filed invoking the extraordinary jurisdiction of the Constitutional Courts provided under Article 226 of Constitution of India will never act as res judicata for the cases filed before the civil courts and tribunals which are clothed with ordinary jurisdiction by the various enactments. This tribunal is clothed with the ordinary jurisdiction to entertain industrial disputes. Whereas while preferring writs before Hon'ble High Court of A.P. the Petitioner has invoked extra ordinary jurisdiction provided under Article 226 of Constitution of India. Further more, Petitioner and others have withdrawn the special leave petition filed by them challenging the judgement dated 22.3.2001 rendered in the rendered by Hon'ble High

Court of A.P. in WA No.1602/2000 only to raise an industrial dispute and said withdrawal has been accepted by Hon'ble Supreme Court of India, as can be seen in Ex.W3 the order rendered in Special Leave to Appeal(Civil) No.13451/2001.

10. Further more, the writ proceedings were launched by the Petitioner and other similarly placed persons seeking for regularisation of their services with the Respondent. Whereas, the present industrial dispute is raised by the Petitioner, consequent to termination of her services while the writ appeal was pending, seeking for setting aside the oral termination order dated 23.10.1998 of the Respondent, whereunder Petitioner's services were terminated consequently directing the Respondent to reinstate the Petitioner into service with attendant benefits. Therefore, cause of action for filing the writ proceeding and for raising the present industrial dispute and also nature of these two proceedings are totally different and distinct.

11. In the given circumstances, it can safely be held that the proceedings of WP No.29210/1998 will not act as res judi cata for the present proceedings.

This point is answered accordingly.

#### 12. Point No. 4 :

Admittedly, Petitioner has worked with the Respondent organisation. It can be said so since, in their counter Respondent has not disputed regarding the fact that Petitioner has worked with them.

13. It is the contention of the Petitioner that she has been engaged by the Respondent for cleaning, sweeping, dusting, watching bend dumps, the work, nature of which is perennial and that the Petitioner was working directly under the control of the Respondent receiving salary directly from the Respondent but however, Respondent brought non-existing contractor between the Petitioner and Respondent to show that there is no master and servant relationship between them.

14. Whereas, Respondent is contending that house keeping works in DAE housing colony, in which the staff of the Respondent unit are housed, is being taken care of by CAPRA municipality, whereas requirement of plant of the Respondent is being met through helpers (COS) deployed for the said purpose, however, prior to making this arrangements through CAPRA municipality and / or deployment of helpers(COS) a running contract for a period of 12 months was awarded for executing urgent works such as, jungle cutting in the NFC works as well as DAE Housing colony, where some contract labourers were engaged and that Petitioner is one among the labourers engaged by the contractor who was awarded with the work of cleaning of roads and storm water drains in housing colony.

15. From the above contention and counter contention of the Petitioner and Respondent, what one



can gather is, that admittedly Petitioner has been working for the Respondent unit, and she was awarded with the work of cleaning of the premises, but it is the contention of the Respondent, contrary to the contentions of the Petitioner, that Petitioner has been a contract labourer engaged by the contractor to whom the cleaning work was entrusted by the Respondent but not a person directly engaged by the Respondent.

16. When once Respondent accepted the fact that Petitioner has worked with him but claimed that there is an intermediary between them i.e., a contractor, it is for the Respondent to establish before the court that there has been such contractor and the said contractor engaged the Petitioner for cleaning work entrusted to her by the Respondent. Further more, it is to be verified by the court, if it is established before the court that there has been such a contractor, whether the principal employer i.e., the Respondent was exercising control over the functioning of the Petitioner or whether through the contractor only the work was being done. Who is exercising control over the conditions of the service of the Petitioner is a crucial aspect to decide whether there is master and servant relationship between the principal employer and the workman or whether the alleged contractor himself remained as a master for the workman and other such relevant aspects. In this regard, it is well established legal principle that “the Industrial Tribunal/court will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere rule/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer.” This is the legal principle laid down by the Hon’ble Supreme Court of India in the case of Steel Authority of India and ors. Vs. National Union Waterfront Workers and Others [(2001) 7 SCC page 1], which is relied upon by Learned Counsel for the Respondent himself.

17. All the above referred crucial aspects in this case can be gathered from the relevant record maintained by the Respondent in connection with the alleged contract entrusted to the contractor regarding the way in which the work was extracted from the Petitioner and other workers and also the mode of payment of wages to the Petitioner and other workmen and other related aspects. It is the burden of the Respondent to place all the relevant record before this tribunal. But the only record produced by the Respondent regarding the alleged contract is Ex. M4, the letter dated 30.9.97 said to have been issued by the Respondent to one Sri P. Ramana Reddy a contractor. There is no record to show that Respondent called for

tenders for given contract work and selected any persons as contractors through any selection process. While she was under cross examination MW1 had admitted that they have not filed any document to show that contractor was engaged or agreement was entered between contractor and Management.

18. Further, in Ex. M4 it is averred that “A daily report indicating the details of labourers and vehicle engaged on the work for each day shall be submitted to the Engineer-in-charge, before 10.00 AM on every working day. Payment of wages to contract labourers shall be as per regulations laid down in CPWD contractors labour regulation to be applicable to Nuclear Fuel Complex. Intimation regarding wage period, date of payment, place and time of disbursement shall be given to the Engineer-in-charge within 2 (two) weeks from the date of issue of this order”. If the work was done in furtherance of Ex. M4 order, in every likelihood the daily report indicating details of labourers and vehicles engaged for the work, would have been submitted by the contractor to the Engineer-in-charge on every working day and further intimation regarding the wage period date of payment, place and time of disbursement of wages also would have been given to the Engineer-in-charge and such documents will be available with the Respondent. But no such documents are placed before the court which indicates that there are no such documents and therefore Ex. M4 has never been acted upon.

19. In the absence of proper proof of the fact that Petitioner has been a labourer worked under a contractor but not a direct employee of the Respondent, it is to be taken that she is the direct employee of the Respondent for the reason that it is an admitted fact that Petitioner worked for the Respondent as a sweeper. It can be taken that there is no proper proof of the contentions of the Respondent that Petitioner has been working under a contractor, for the above referred reason that Respondent failed to produce that all the relevant documents which will certainly will be in their custody, if actually Petitioner has been working under a contractor to whom the Respondent entrusted the cleaning of the premises as a contract work. Therefore, it can safely be held that Respondent failed to establish that Petitioner has been working under a contractor who has been entrusted with the job of cleaning of their premises but not their direct employee.

20. In view of the foregone discussion it can safely be held that there is relationship of workman and Management between the Petitioner and the Respondent which indicates that there is master and servant relationship between them.

This point is answered accordingly.

#### 21. Point No. 5 :

As can be gathered from the line of the defence taken in this case by the Respondent and the arguments

built up and advanced for them, what one can see is that they are meeting the claim of the Petitioner, as if the Petitioner is seeking for regularization of services. But the fact remains that Petitioner is seeking for setting aside the order under which Petitioner's services were terminated and for reinstatement into service and other consequential reliefs. In the writ proceedings Petitioner sought for regularization of service but while writ appeal was pending disposal, as the Petitioner's services were terminated, this industrial dispute is raised seeking for setting aside the said termination order and consequential reinstatement of the Petitioner into service and for grant of other attendant benefits. Ignoring these aspects Respondent is advancing their arguments regarding the claim of the Petitioner in the writ proceedings for regularization of services. The said arguments are to be taken as not helpful for the proceedings of this case. The various legal precedents cited for the Respondent are also not helpful for furtherance of this case as they are all in respect of the regularization of the services of the contract employees. In this case, the relief sought for is not for regularization of service but it is for reinstatement into service. But in this case also the question whether Petitioner has been a contract labourer or other wise is to be decided and it has been decided while deciding Point No.4 alone.

22. Evidently, Respondent ceased to take services of the Petitioner since 23.10.1998. In their counter the Respondent has chosen to plead that the contractor has terminated the services of the Petitioner in the year 1998 but as discussed above while deciding point No.4 Respondent failed to establish that there has been a contractor as an intermediary between them and the Petitioner. Thus, it can safely be inferred that Respondent is the organization which terminated the services of the Petitioner.

23. It is claim of the Petitioner that said termination is by way of an oral order and therefore, it is not possible for the Petitioner to produce any termination order. But the fact remains that even as per contentions of the Respondent they ceased to take the services of the Petitioner since the year 1998. Therefore, it can reasonably be accepted that there has been oral termination of the Petitioner with effect from 23.10.1998.

24. It is well established principle of law that every termination spells retrenchment. With this regard there is no dispute.

25. Sec. 25F of the Industrial Disputes Act, 1947 deals with conditions precedent to retrenchment of workman. Sec.25 F reads as follows:-

“25-F: Conditions precedent to retrenchment of workmen:- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice.
- (b) The workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and
- (c) Notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the official Gazette].”

26. As can be gathered from the facts on record, Petitioner worked for one year continuously even as per the contentions of the Respondent, leaving alone the contentions of the Petitioner that she has been in continuous service with the Respondent since years together which has not been disproved by producing the record maintained by the Respondent regarding the service of the Petitioner with the Respondent. Therefore, it can safely be held that Petitioner comes under the purview of the workman mentioned in Sec.25F by working with the Respondent for not less than one year. As per Sec. 25F such a workman can not be retrenched, until he has been given one month's notice in writing indicating the reasons for retrenchment and only after expiry of the period of notice or otherwise by making payment of wages in lieu of such notice for the period of notice. Further more, the workman has to be paid retrenchment compensation as mentioned in Sec. 25F (b) and there shall be compliance of Sec. 25F (c).

27. Unless there is compliance of all the above mentioned mandatory pre requisites the retrenchment of the workman is to be held as null and void, illegal and inoperative, as per the well established legal principles laid down by Hon'ble the Apex Court. In the case of Devinder Singh Vs. Municipal Council, Sanaur, [(2011) 6 SCC page 584] and in the case of Anup Sharma Vs. Public Health Division [(2010) 5 SCC 497] Hon'ble Supreme Court of India considered the effect of violation of Sec. 25F and held that termination of service of a workman without complying with the mandatory provisions contained under Sec. 25F (A) and (B) should ordinarily result in his reinstatement.

28. In the present case, evidently there is no compliance of the mandatory pre-requisites contemplated under Sec. 25F (a) and (b) of Industrial Disputes Act, 1947. Therefore, the impugned termination order is bad and is liable to be set aside and Petitioner is entitled for reinstatement into service.



This point is answered accordingly.

**29. Point No. 6 :**

In view of the findings given in Point No.5 above, the impugned oral termination order dated 23.10.1998 is liable to be set aside. Consequently Petitioner is entitled for reinstatement into service as Sweeper with continuity of service. Considering the way in which the Petitioner's services were terminated while the writ proceedings launched by the Petitioner seeking for regularization is pending, it can safely be held that Petitioner is entitled for all back wages, and all other attendant benefits.

This point is answered accordingly.

**30. Result :**

In the result, petition is allowed. The oral order dated 23.10.1998 of the Respondent terminating the services of the Petitioner is hereby set aside. Petitioner shall be reinstated into service forthwith. Respondent shall pay back wages to the Petitioner for the period from 23.10.1998 the date of termination of her services till the date of the Petitioner's reinstatement into service. Petitioner is entitled for all other consequential benefits as well.

Award passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant corrected by me on this the 30<sup>th</sup> day of August, 2013.

M. VIJAYA LAKSHMI, Presiding Officer

**Appendix of evidence**

Witnesses examined for : Witnesses examined for  
the Petitioner the Respondent

WW1: Smt. B. Savitri MW1 : Smt. A. Rama Devi

**Documents marked for the Petitioner**

- Ex.W1 : Photostat copy of order in WPN0.29210/1998 dt.25.9.2000  
Ex.W2 : Photostat copy of representation dt.11.4.98  
Ex.W3 : Photostat copy of order in SLA (Civil) Np.13451/2001  
Ex.W4 : Photostat copy of representation dt.3.5.96  
Ex.W5 : Photostat copy of provisional receipt from Kapra Municipality dt.13.11.98  
Ex.W6 : Photostat copy of representation dt.9.10.98  
Ex.W7 : Photostat copy of order in WA No.1602/1999  
Ex.W8 : Photostat copy of representation dt. 28.9.2005

**Documents marked for the Respondent**

- Ex.M1 : Photostat copy of order in WP No.5592/1991  
Ex.M2 : Photostat copy of receipt from Kapra Municipality dt.13.11.98  
Ex.M3 : Photostat copy of letter dt.9.1.1999 issued by NFC to Commissioner, Kapra Municipality.

- Ex.M4 : Photostat copy of letter dt. 30.9.97 issued by NFC to Sri P. Ramana Reddy, Contractor  
Ex.M5 : Photostat copy of order in contempt case No.1903/98  
Ex.M6 : Photostat copy of order in WPN0.29210/1998 dt.25.9.2000  
Ex.M7 : Photostat copy of order in WA No.1602/1999  
Ex.M8 : Photostat copy of receipt from Kapra Municipality dt.1.1.1999

नई दिल्ली, 17 जनवरी, 2014

**का.आ. 442.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार चीफ एग्जीक्यूटिव नुक्लेअर फ्यूल कामप्लेक्स डिपार्टमेंट ऑफ एटॉमिक एनर्जी, हैदराबाद के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 28/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-1-2014 को प्राप्त हुआ था।

[सं. एल-42012/03/2014-आई आर (डीयू)]  
पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 17th January, 2014

**S.O. 442.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 28/2006) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the Management of Chief Executive, Nuclear Fuel Complex, Department of Atomic Energy, Hyderabad and their workman, which was received by the Central Government on 13-1-2014.

[No. L-42012/03/2014-IR (DU)]

P. K. VENUGOPAL, Section Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT  
AT HYDERABAD**

**Present :** Smt. M. Vijaya Lakshmi, Presiding Officer

Dated the 30<sup>th</sup> day of August, 2013

**INDUSTRIAL DISPUTE L.C. No. 28/2006**

**Between :**

Smt. T. Saradha,  
W/o T. Muthyalu,  
R/o H. No. 2-88,  
Chiryala, Kesara Mandal,  
Ranga Reddy District,  
Hyderabad-62

....Petitioner

AND

Chief Executive,  
Nuclear Fuel Complex,  
Department of Atomic Energy,  
Hyderabad – 500 062

....Respondent

#### Appearances :

For the Petitioner : M/s. G. Ravi Mohan, G. Narresh  
Kumar, Vikas Sharma, K. Bhaskar  
& G. Pavan Kumar, Advocates

For the Respondent: Sri K. Suryanarayana, Advocate

#### AWARD

This is a petition filed invoking Sec.2A(2) of Industrial Disputes Act, 1947 by the Petitioner who is claiming to be the person who worked as sweeper in the Respondent unit seeking for setting aside the oral termination of services dated 23.10.1998 by the Respondent consequently to direct the Respondent to reinstate the Petitioner into service with continuity of service, back wages and all other attendant benefits.

#### 2. The averments made in the petition in brief are as follows:

Petitioner worked as Sweeper in the Respondent unit w.e.f. 1.5.1992 along with other similarly situated persons. Petitioner was engaged for cleaning, sweeping, dusting, watching of bend dumps. This work is perennial nature. Petitioner was working directly under the control of the Respondent and the salary of the Petitioner is being paid directly by the Respondent. However, Respondent brought non-existing contractor between the Petitioner and the Respondent, to show that there is no master and servant relationship between them. The Central Government, exercising the power under Sec.10 of Abolition of Contract Labour Act on the basis of the recommendations and in conciliation with the Central Advisory Board constituted under Sec.10 (1) of the said act issued notification dated 9.12.1976 prohibiting employment of contract labourers in respect of cleaning sweeping, dusting and watching of the building owned by or occupied by the establishment in respect of which the appropriate government under the said act is the Central Government. Petitioner's job is cleaning and sweeping. Once engaging contract labourers for said job is abolished, there is an obligation for the Respondent to consider regularising the Petitioner and similarly placed persons basing on the availability of vacancies. Even as per the mandate of the Apex Court it is the statutory obligation of the Principal Employer to absorb the contract labourer once the contract labour is abolished and to treat them as regular employees. It is the statutory obligation under Sections 11, 19 and 20 of the Factories Act to maintain cleanliness of the area in which the factory is situated. Respondent company is a factory. Even as per the condition contained in format of the license under

Contract Labour Regulation and Abolition Act, Petitioner is entitled for regular pay of the minimum wages prescribed by the Government. Initially Petitioner was paid Rs.25/- per day. Subsequently it was enhanced to Rs. 45/- per day. Petitioner worked from May, 1992 to October, 1998 continuously without any break in service. Petitioner along with other similarly situated persons filed WP No.29210 of 1998 before the Hon'ble High Court of A.P. for absorbing as a regular employee and to pay other benefits on par with other employees. During the pendency of the said Writ petition, Petitioner was terminated from the service in the month of October, 1998 and the writ petition was allowed by an order dated 25.9.2000. Against the said order WA No. 1602/1999 was filed by the Respondent before the Division Bench of the Hon'ble High Court of A.P. The said appeal was allowed on 23.2.2001. Against the said order Petitioner filed Special Leave to Appeal (Civil) No.13451/2001 before the Hon'ble Supreme Court of India and the same was withdrawn with a liberty to raise industrial dispute before the appropriate forum on 9.11.2001. Thus, the Petitioner raised the dispute. The premises of the Respondent including the residential quarters of the officers of the Respondent is in the same campus, i.e., within the premises of the Respondent. Cleaning activities of the Respondent quarters which includes, roads and maintenance of the buildings is to be taken care off by the Respondents only. An officer from the civil department used to take care of the work in respect of cleaning and maintenance of the factory buildings including the residential quarters. No work was entrusted to any outsider at any point of time i.e., contractor. Respondent used to maintain details of casual labourers, who were entrusted with the works of cleaning, gardening, civil works etc., which are perennial in nature. Petitioner was deputed to work as sweeper. Respondent never issued any appointment letter. However, salary was being paid by the Respondent Management on monthly basis. Attendance register and wages register were maintained by the Respondent and the same are in their custody. Respondent used to take the signature of the Petitioner in the wage register every month while paying salary in cash. There was no contract given to any contractor who is in between Respondent and Petitioner. In view of the notification issued by the Central Government. Respondent should not engage any contract labour. Admittedly, Petitioner is an uneducated woman and she has been exploited by the Respondent by paying less than minimum wages and terminating her services abruptly without any notice consequent to her filing WP before the Hon'ble High Court of A.P. and without following the procedure contemplated under Industrial Disputes Act, 1947 as well as Contract Labour Regulation and Abolition Act. There is violation of the provisions of Sec.25F of Industrial Disputes Act, 1947. Petitioner is the only earning member of her family and consequent to illegal termination of her services it has become difficult to eak out livelihood of her family.

### 3. Respondent filed his counter with the averments in brief as follows:

Petitioner is supposed to approach Hon'ble Central Administrative Tribunal. Which has the requisite jurisdiction over the service matters as held by the Hon'ble Supreme Court of India in the case of Chandra Kumar Vs. Union of India and in view of the direction given in WP No.5592 of 1991 filed by Sri Kewal Singh and 17 others vide order dated 22.4.1991. Petitioner's claim is barred by limitation as services of the Petitioner said to have been terminated way back in 1995 as the contract entered into with Sri P. Narasimha, the contractor, Respondent No.2 in WP No.29210/1998 expired by 30.6.1995. On this ground also petition is not maintainable. The Nuclear Fuel Complex has constructed manufacturing plants and administrative buildings with separate enclosures and the ingress and egress of this premises is guarded by Central Industrial Security Force of Ministry of Home Affairs. In so far as housing colony spreading in an area of 260 acres is concerned, watch and ward is taken care of by a security agency. Without any restriction for the entry in the colony by the general public for the purpose of visit the residents of the colony. The over all control including allotment of quarters vests with the Estate Officer, NFC. It is necessary to pay taxes which include service charges in respect of the said colony and it has termed within the jurisdiction of the KAPRA municipality. Since service charges running into lakhs of rupees have been paid to Kapra Municipality which facilitated the Respondent approaching them for taking up the house keeping jobs in DAE colony. The house keeping works of DAE housing colony is being taken care of by Kapra municipality. The requirement is being met through helpers deployed by such persons. Making such arrangements on the deployment of helpers a running contract for a period of 12 months executing urgent works such as jungle cutting in the sprawling Nuclear Fuel Complex, cleaning of storm water drains and clearance of garbage on roads vide letter dated 30.9.1997. Similar contract was in existence in DAE housing colony where some contract labourers were also engaged. Petitioner is one among the labourers engaged by the contractor who was awarded the work of cleaning of roads and storm water drains in housing colony. Her engagement is not within the knowledge and control of the Respondent at any time. It was outside the scope of the notification dated 9.12.1976 issued by the Central Government. There was no scope for direct payment by the Respondent to the Petitioner at any point of time. Petitioner filed WP No.29210 of 1998 seeking for regularization of her services along with others. By virtue of order dated 22.10.1998 in WPMP 35709 of 1998 Hon'ble High Court of A.P. was pleased to direct that the position shall be maintained till further orders if the Petitioners were in service as on that date. Ultimately by virtue of order dated in WP 29210 of 1998 regularization of the services of the Petitioner among

others was ordered. Respondents preferred WA No.1602/2000 which was allowed vide order dated 22.3.2001. Whereunder, the impugned judgement dated 25.9.2000 in WP No.29210 of 1998 has been set aside. Having maintained silence for a period of more than 5 years Petitioner approached this Tribunal now. It is a belated claim. Statement of the Petitioner that the work done by her was perennial in nature was denied. It was a stop gap arrangement prior to approach the Municipal Authorities of Kapra for taking assistants. Petitioner never worked directly under the control of the Respondent and salary paid to her by the Respondent is outrightly denied. The engagement of the Petitioner by a contractor was outside the scope of notification dated 9.12.1976 issued by the Central Government under Contract Labour (R & A) Act, 1970. Petitioner's employer was not having any contractual obligation with her as on the date of issuance of the notification dated 9.12.1976. As per the mandate of Hon'ble Apex Court only those contract labourers who were working at the time of issuance of the said notification could be directed to be absorbed in the establishment of the Principal Employer. Petitioner was not a casual labourer on the rolls of the Respondent. Even otherwise as per the mandate of Hon'ble Apex Court casual labourers employed on temporary works are not entitled for regularization for absorption as it amounts to back door entries into service on the basis of completion of 240 days of work and the appointment to the service has to be made in accordance with the statutory rules and guidelines thereunder. Contract labourers are not entitled to the same pay scales as of the regular employees. The residential quarters are not within factory premises. Petitioner never directly engaged by the Respondent and she was never exploited. Petitioner rendered service as a contract labourer with a contractor. She can not claim for regularization of her services. In the writ proceedings for the similar cause of action, litigation was launched seeking for same relief in this proceedings is hit by res judi cata. Petition is liable to be dismissed.

4. To substantiate the contentions of the Petitioner WW1 was examined and Exhibits W1 to W8 are marked. While WW1 evidence was in progress and by virtue of the orders dated 17.3.2009, this matter and L.C. Nos. 29 to 40/2006 are clubbed together in pursuance of the memo filed by the Petitioner and it has been ordered that evidence is to be adduced in this case i.e., L.C. Nos. 28/2006. Accordingly in respect of all these cases i.e., L.C. Nos. 28 to 40 of 2006, Smt. T. Saradha, WW1 in this case alone has been cross examined on behalf of respondents, though separate chief examination affidavits of WW1 have been filed in all these cases. Further more, Respondent's evidence has been adduced in all these cases separately by examining MW1 and Management marked Ex.M1 to M8 in each case and arguments are also advanced in all these cases and Respondent has filed his



written arguments in all these cases separately. In the given circumstances and for the sake of effective disposal of all these cases awards are being passed in all these cases separately and individually.

5. Heard the arguments of either party and written arguments of either party are also filed and they are considered.

**6. The points that arise for determination are:**

1. Whether this dispute is not maintainable before this tribunal for want of jurisdiction?
2. Whether this dispute is barred by limitation?
3. Whether the proceedings in writ petition No.29210 of 1998 operate as res judi cata?
4. Whether there is no relationship of workman and Management between the Petitioner and Respondent?
5. Whether there is termination of the service of the Petitioner by the Respondent through oral termination order dated 23.10.1998? If so, whether the said order is liable to be set aside?
6. To what relief Petitioner is entitled?

**7. Point No. 1:**

There is no dispute as to the fact that Petitioner is a workman and Respondent is an industry. But, Respondent is contending that this tribunal can not entertain this case for the reason, that as held in the case of Sri Chandra Kumar vs. Union of India (AIR 1997 SC 1125) Petitioner is supposed to have his legal recourse from the Central Administrative Tribunal. This contention can not be accepted as a correct contention. It is undoubtedly an industrial dispute and the Respondent is admittedly a central government organisation. This forum is Central Government Industrial Tribunal cum Labour Court whose function is to decide the industrial disputes arising from the industries which are Central Government undertakings. All the industrial disputes which arose within the jurisdiction of this tribunal and which concern with the Central Government organisations Central Government undertakings, are to be decided by this forum only as per the powers conferred on this tribunal. As to the Central Administrative Tribunal is concerned, all the service and administration related disputes pertaining to the officers and employees of all the central government offices, organisations and undertakings are to be dealt with by the said forum. Since the present dispute is an industrial dispute raised under Sec.2A(2) of Industrial Disputes Act, 1947, this tribunal got every jurisdiction to entertain this dispute.

This point is answered accordingly.

**8. Point No. 2 :**

It is the contention of the Respondent that present dispute is barred by limitation for the reason that Petitioner filed this petition five years after the Hon'ble High Court of A.P. decided WA No.1602/2000 in WP No.29210 /1998 by virtue of judgement dated 22.3.2001. In this regard, it can clearly be seen that there is no consonance between the writ proceedings and filing of this industrial dispute before this court. Further more, as on the date of filing of the present petition, no limitation was prescribed for preferring industrial disputes in the Industrial Disputes Act, 1947. Only recently i.e., in the year 2010 limitation has been prescribed for preferring industrial disputes invoking Sec.2A(2) of Industrial Disputes Act, 1947 by enacting Sec.2A(3) of the said act. Thus, as on the relevant date, there was no prescription of period of limitation for preferring industrial disputes. It is not for the courts to prescribe any period of limitation. When the Act is silent as to the question of limitation, the courts are bound to entertain the cases, without looking into the belatedness or otherwise in filing the same, as it is the duty of the courts to interpret and implement the law enacted by the parliament only, but not to substitute or incorporate any new law. In the given circumstances, it is to be held that this petition is not barred by limitation.

This point is answered accordingly.

**9. Point No. 3 :**

The writs filed invoking the extraordinary jurisdiction of the Constitutional Courts provided under Article 226 of Constitution of India will never act as res jud-cata for the cases filed before the civil courts and tribunals which are clothed with ordinary jurisdiction by the various enactments. This tribunal is clothed with the ordinary jurisdiction to entertain industrial disputes. Whereas while preferring writs before Hon'ble High Court of A.P. the Petitioner has invoked extra ordinary jurisdiction provided under Article 226 of Constitution of India. Further more, Petitioner and others have withdrawn the special leave petition filed by them challenging the judgement dated 22.3.2001 rendered in the rendered by Hon'ble High Court of A.P. in WA No.1602/2000 only to raise an industrial dispute and said withdrawal has been accepted by Hon'ble Supreme Court of India, as can be seen in Ex.W3 the order rendered in Special Leave to Appeal(Civil) No.13451/2001.

10. Further more, the writ proceedings were launched by the Petitioner and other similarly placed persons seeking for regularisation of their services with the Respondent. Whereas, the present industrial dispute is raised by the Petitioner, consequent to termination of her services while the writ appeal was pending, seeking for setting aside the oral termination order dated 23.10.1998 of the Respondent, whereunder Petitioner's services were terminated consequently directing the Respondent to reinstate the Petitioner into service with attendant benefits.

Therefore, cause of action for filing the writ proceeding and for raising the present industrial dispute and also nature of these two proceedings are totally different and distinct.

11. In the given circumstances, it can safely be held that the proceedings of WP No.29210/1998 will not act as *res judi* data for the present proceedings.

This point is answered accordingly.

#### 12. Point No. 4 :

Admittedly, Petitioner has worked with the Respondent organisation. It can be said so since, in their counter Respondent has not disputed regarding the fact that Petitioner has worked with them.

13. It is the contention of the Petitioner that she has been engaged by the Respondent for cleaning, sweeping, dusting, watching bend dumps, the work, nature of which is perennial and that the Petitioner was working directly under the control of the Respondent receiving salary directly from the Respondent but however, Respondent brought non-existing contractor between the Petitioner and Respondent to show that there is no master and servant relationship between them.

14. Whereas, Respondent is contending that house keeping works in DAE housing colony, in which the staff of the Respondent unit are housed, is being taken care of by CAPRA municipality, whereas requirement of plant of the Respondent is being met through helpers(COS) deployed for the said purpose, however, prior to making this arrangements through CAPRA municipality and / or deployment of helpers(COS) a running contract for a period of 12 months was awarded for executing urgent works such as, jungle cutting in the NFC works as well as DAE Housing colony, where some contract labourers were engaged and that Petitioner is one among the labourers engaged by the contractor who was awarded with the work of cleaning of roads and storm water drains in housing colony.

15. From the above contention and counter contention of the Petitioner and Respondent, what one can gather is, that admittedly Petitioner has been working for the Respondent unit, and she was awarded with the work of cleaning of the premises, but it is the contention of the Respondent, contrary to the contentions of the Petitioner, that Petitioner has been a contract labourer engaged by the contractor to whom the cleaning work was entrusted by the Respondent but not a person directly engaged by the Respondent.

16. When once Respondent accepted the fact that Petitioner has worked with him but claimed that there is an intermediary between them i.e., a contractor, it is for the Respondent to establish before the court that there has been such contractor and the said contractor engaged the Petitioner for cleaning work entrusted to her by the

Respondent. Further more, it is to be verified by the court, if it is established before the court that there has been such a contractor, whether the principal employer i.e., the Respondent was exercising control over the functioning of the Petitioner or whether through the contractor only the work was being done. Who is exercising control over the conditions of the service of the Petitioner is a crucial aspect to decide whether there is master and servant relationship between the principal employer and the workman or whether the alleged contractor himself remained as a master for the workman and other such relevant aspects. In this regard, it is well established legal principle that “the Industrial Tribunal/court will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere rule/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer.” This is the legal principle laid down by the Hon’ble Supreme Court of India in the case of Steel Authority of India and ors. Vs. National Union Waterfront Workers and Others [(2001) 7 SCC page 1], which is relied upon by Learned Counsel for the Respondent himself.

17. All the above referred crucial aspects in this case can be gathered from the relevant record maintained by the Respondent in connection with the alleged contract entrusted to the contractor regarding the way in which the work was extracted from the Petitioner and other workers and also the mode of payment of wages to the Petitioner and other workmen and other related aspects. It is the burden of the Respondent to place all the relevant record before this tribunal. But the only record produced by the Respondent regarding the alleged contract is Ex.M4, the letter dated 30.9.97 said to have been issued by the Respondent to one Sri P. Ramana Reddy a contractor. There is no record to show that Respondent called for tenders for given contract work and selected any persons as contractors through any selection process. While she was under cross examination MW1 had admitted that they have not filed any document to show that contractor was engaged or agreement was entered between contractor and Management.

18. Further, in Ex.M4 it is averred that “A daily report indicating the details of labourers and vehicle engaged on the work for each day shall be submitted to the Engineer-in-charge, before 10.00 AM on every working day. Payment of wages to contract labourers shall be as per regulations laid down in CPWD contractors labour regulation to be applicable to Nuclear Fuel Complex. Intimation regarding wage period, date of payment, place

and time of disbursement shall be given to the Engineer-in-charge within 2 (two) weeks from the date of issue of this order". If the work was done in furtherance of Ex.M4 order, in every likelihood the daily report indicating details of labourers and vehicles engaged for the work, would have been submitted by the contractor to the Engineer-in-charge on every working day and further intimation regarding the wage period date of payment, place and time of disbursement of wages also would have been given to the Engineer-in-charge and such documents will be available with the Respondent. But no such documents are placed before the court which indicates that there are no such documents and therefore Ex.M4 has never been acted upon.

19. In the absence of proper proof of the fact that Petitioner has been a labourer worked under a contractor but not a direct employee of the Respondent, it is to be taken that she is the direct employee of the Respondent for the reason that it is an admitted fact that Petitioner worked for the Respondent as a sweeper. It can be taken that there is no proper proof of the contentions of the Respondent that Petitioner has been working under a contractor, for the above referred reason that Respondent failed to produce that all the relevant documents which will certainly will be in their custody, if actually Petitioner has been working under a contractor to whom the Respondent entrusted the cleaning of the premises as a contract work. Therefore, it can safely be held that Respondent failed to establish that Petitioner has been working under a contractor who has been entrusted with the job of cleaning of their premises but not their direct employee.

20. In view of the foregone discussion it can safely be held that there is relationship of workman and Management between the Petitioner and the Respondent which indicates that there is master and servant relationship between them.

This point is answered accordingly.

#### 21. Point No. 5 :

As can be gathered from the line of the defence taken in this case by the Respondent and the arguments built up and advanced for them, what one can see is that they are meeting the claim of the Petitioner, as if the Petitioner is seeking for regularization of services. But the fact remains that Petitioner is seeking for setting aside the order under which Petitioner's services were terminated and for reinstatement into service and other consequential reliefs. In the writ proceedings Petitioner sought for regularization of service but while writ appeal was pending disposal, as the Petitioner's services were terminated, this industrial dispute is raised seeking for setting aside the said termination order and consequential reinstatement of the Petitioner into service and for grant of other attendant benefits. Ignoring these aspects Respondent is advancing

their arguments regarding the claim of the Petitioner in the writ proceedings for regularization of services. The said arguments are to be taken as not helpful for the proceedings of this case. The various legal precedents cited for the Respondent are also not helpful for furtherance of this case as they are all in respect of the regularization of the services of the contract employees. In this case, the relief sought for is not for regularization of service but it is for reinstatement into service. But in this case also the question whether Petitioner has been a contract labourer or other wise is to be decided and it has been decided while deciding Point No.4 alone.

22. Evidently, Respondent ceased to take services of the Petitioner since 23.10.1998. In their counter the Respondent has chosen to plead that the contractor has terminated the services of the Petitioner in the year 1998 but as discussed above while deciding point No.4 Respondent failed to establish that there has been a contractor as an intermediary between them and the Petitioner. Thus, it can safely be inferred that Respondent is the organization which terminated the services of the Petitioner.

23. It is claim of the Petitioner that said termination is by way of an oral order and therefore, it is not possible for the Petitioner to produce any termination order. But the fact remains that even as per contentions of the Respondent they ceased to take the services of the Petitioner since the year 1998. Therefore, it can reasonably be accepted that there has been oral termination of the Petitioner with effect from 23.10.1998.

24. It is well established principle of law that every termination spells retrenchment. With this regard there is no dispute.

25. Sec.25F of the Industrial Disputes Act, 1947 deals with conditions precedent to retrenchment of workman. Sec.25 F reads as follows:-

"25-F: Conditions precedent to retrenchment of workmen:- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice.
- (b) The workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and



- (c) Notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the official Gazette].”

26. As can be gathered from the facts on record, Petitioner worked for one year continuously even as per the contentions of the Respondent, leaving alone the contentions of the Petitioner that she has been in continuous service with the Respondent since years together which has not been disproved by producing the record maintained by the Respondent regarding the service of the Petitioner with the Respondent. Therefore, it can safely be held that Petitioner comes under the purview of the workman mentioned in Sec.25F by working with the Respondent for not less than one year. As per Sec.25F such a workman can not be retrenched, until he has been given one month's notice in writing indicating the reasons for retrenchment and only after expiry of the period of notice or otherwise by making payment of wages in lieu of such notice for the period of notice. Further more, the workman has to be paid retrenchment compensation as mentioned in Sec.25F (b) and there shall be compliance of Sec.25F (c).

27. Unless there is compliance of all the above mentioned mandatory pre requisites the retrenchment of the workman is to be held as null and void, illegal and inoperative, as per the well established legal principles laid down by Hon'ble the Apex Court. In the case of Devinder Singh Vs. Municipal Council, Sanaur, [(2011) 6 SCC page 584] and in the case of Anup Sharma Vs. Public Health Division [(2010) 5 SCC 497] Hon'ble Supreme Court of India considered the effect of violation of Sec.25F and held that termination of service of a workman without complying with the mandatory provisions contained under Sec.25F (A) and (B) should ordinarily result in his reinstatement.

28. In the present case, evidently there is no compliance of the mandatory pre-requisites contemplated under Sec.25F (a) and (b) of Industrial Disputes Act, 1947. Therefore, the impugned termination order is bad and is liable to be set aside and Petitioner is entitled for reinstatement into service.

This point is answered accordingly.

#### 29. Point No. 6 :

In view of the findings given in Point No.5 above, the impugned oral termination order dated 23.10.1998 is liable to be set aside. Consequently Petitioner is entitled for reinstatement into service as Sweeper with continuity of service. Considering the way in which the Petitioner's services were terminated while the writ proceedings launched by the Petitioner seeking for regularization is pending, it can safely be held that Petitioner is entitled for all back wages, and all other attendant benefits.

This point is answered accordingly.

#### 30. Result :

In the result, petition is allowed. The oral order dated 23.10.1998 of the Respondent terminating the services of the Petitioner is hereby set aside. Petitioner shall be reinstated into service forthwith. Respondent shall pay back wages to the Petitioner for the period from 23.10.1998 the date of termination of her services till the date of the Petitioner's reinstatement into service. Petitioner is entitled for all other consequential benefits as well.

Award passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant corrected by me on this the 30<sup>th</sup> day of August, 2013.

M. VIJAYA LAKSHMI, Presiding Officer

#### Appendix of evidence

| Witnesses examined for the Petitioner | Witnesses examined for the Respondent |
|---------------------------------------|---------------------------------------|
| WW1: Smt. B. Savitri                  | MW1 : Smt. A. Rama Devi               |

#### Documents marked for the Petitioner

|         |   |
|---------|---|
| Ex.W1 : | Photostat copy of order in WP No. 29210/1998 dt.25.9.2000                 |
| Ex.W2 : | Photostat copy of representation dt.11.4.98                               |
| Ex.W3 : | Photostat copy of order in SLA (Civil) Np.13451/2001                      |
| Ex.W4 : | Photostat copy of representation dt.3.5.96                                |
| Ex.W5 : | Photostat copy of provisional receipt from Kapra Municipality dt.13.11.98 |
| Ex.W6 : | Photostat copy of representation dt.9.10.98                               |
| Ex.W7 : | Photostat copy of order in WA No.1602/1999                                |
| Ex.W8 : | Photostat copy of representation dt. 28.9.2005                            |

#### Documents marked for the Respondent

|         |   |
|---------|---|
| Ex.M1 : | Photostat copy of order in WP No.5592/1991  |
| Ex.M2 : | Photostat copy of receipt from Kapra Municipality dt.13.11.98                           |
| Ex.M3 : | Photostat copy of letter dt.9.1.1999 issued by NFC to Commissioner, Kapra Municipality. |
| Ex.M4 : | Photostat copy of letter dt. 30.9.97 issued by NFC to Sri P. Ramana Reddy, Contractor   |
| Ex.M5 : | Photostat copy of order in contempt case No.1903/98                                     |
| Ex.M6 : | Photostat copy of order in WP No. 29210/1998 dt.25.9.2000                               |
| Ex.M7 : | Photostat copy of order in WA No.1602/1999  |
| Ex.M8 : | Photostat copy of receipt from Kapra Municipality dt.1.1.1999.                          |

नई दिल्ली, 17 जनवरी, 2014

**का.आ. 443.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार चीफ एग्जीक्यूटिव, नुक्लेअर फ्यूल काम्प्लेक्स, डिपार्टमेंट ऑफ एटॉमिक एनर्जी, हैदराबाद के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 29/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-1-2014 को प्राप्त हुआ था।

[सं. एल-42012/03/2014-आई आर (डीयू)]

पी.के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 17th January, 2014

**S.O. 443.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 29/2006) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Chief Executive, Nuclear Fuel Complex, Department of Atomic Energy, Hyderabad and their workman, which was received by the Central Government on 13-1-2014.

[No. L-42012/03/2014-IR (DU)]

P. K. VENUGOPAL, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

**Present :** Smt. M. Vijaya Lakshmi, Presiding Officer

Dated : the 30th day of August, 2013

**INDUSTRIAL DISPUTE L.C. No. 29/2006**

#### Between:

Smt. G. Ambi,  
W/o G. Gopaiah Nayak,  
R/o H.No.1-9-381/268/1,  
Krishan Reddy Colony, Near Kushaiguda,  
ECIL Post, Ranga Reddy District,  
Hyderabad. ...Petitioner

AND

Chief Executive,  
Nuclear Fuel Complex,  
Department of Atomic Energy,  
Hyderabad – 500 062. ...Respondent

#### Appearances:

For the Petitioner : M/s. G. Ravi Mohan, G.  
Narerssh Kumar, Vikas  
Sharma, K. Bhaskar & G.  
Pavan Kumar, Advocates

For the Respondent: Sri K. Suryanarayana,  
Advocate

#### AWARD

This is a petition filed invoking Sec.2A(2) of Industrial Disputes Act, 1947 by the Petitioner who is claiming to be the person who worked as sweeper in the Respondent unit seeking for setting aside the oral termination of services dated 23.10.1998 by the Respondent consequently to direct the Respondent to reinstate the Petitioner into service with continuity of service, back wages and all other attendant benefits.

2. The averments made in the petition in brief are as follows:

Petitioner worked as Sweeper in the Respondent unit w.e.f. 1.5.1992 along with other similarly situated persons. Petitioner was engaged for cleaning, sweeping, dusting, watching of bend dumps. This work is perennial nature. Petitioner was working directly under the control of the Respondent and the salary of the Petitioner is being paid directly by the Respondent. However, Respondent brought non-existing contractor between the Petitioner and the Respondent, to show that there is no master and servant relationship between them. The Central Government, exercising the power under Sec.10 of Abolition of Contract Labour Act on the basis of the recommendations and in conciliation with the Central Advisory Board constituted under Sec.10 (1) of the said act issued notification dated 9.12.1976 prohibiting employment of contract labourers in respect of cleaning sweeping, dusting and watching of the building owned by or occupied by the establishment in respect of which the appropriate government under the said act is the Central Government. Petitioner's job is cleaning and sweeping. Once engaging contract labourers for said job is abolished, there is an obligation for the Respondent to consider regularising the Petitioner and similarly placed persons basing on the availability of vacancies. Even as per the mandate of the Apex Court it is the statutory obligation of the Principal Employer to absorb the contract labourer once the contract labour is abolished and to treat them as regular employees. It is the statutory obligation under Sections 11, 19 and 20 of the Factories Act to maintain cleanliness of the area in which the factory is situated. Respondent company is a factory. Even as per the condition contained in format of the license under Contract Labour Regulation and Abolition Act, Petitioner is entitled for regular pay of the minimum wages prescribed by the Government. Initially Petitioner was paid

Rs. 25 per day. Subsequently it was enhanced to Rs. 45 per day. Petitioner worked from May, 1992 to October, 1998 continuously without any break in service. Petitioner along with other similarly situated persons filed WP No.29210 of 1998 before the Hon'ble High Court of A.P. for absorbing as a regular employee and to pay other benefits on par with other employees. During the pendency of the said Writ petition, Petitioner was terminated from the service in the month of October, 1998 and the writ petition was allowed by an order dated 25.9.2000. Against the said order WA No. 1602/1999 was filed by the Respondent before the Division Bench of the Hon'ble High Court of A.P. The said appeal was allowed on 23.2.2001. Against the said order Petitioner filed Special Leave to Appeal (Civil) No.13451/2001 before the Hon'ble Supreme Court of India and the same was withdrawn with a liberty to raise industrial dispute before the appropriate forum on 9.11.2001. Thus, the Petitioner raised the dispute. The premises of the Respondent including the residential quarters of the officers of the Respondent is in the same campus, i.e., within the premises of the Respondent. Cleaning activities of the Respondent quarters which includes, roads and maintenance of the buildings is to be taken care off by the Respondents only. An officer from the civil department used to take care of the work in respect of cleaning and maintenance of the factory buildings including the residential quarters. No work was entrusted to any outsider at any point of time i.e., contractor. Respondent used to maintain details of casual labourers, who were entrusted with the works of cleaning, gardening, civil works etc., which are perennial in nature. Petitioner was deputed to work as sweeper. Respondent never issued any appointment letter. However, salary was being paid by the Respondent Management on monthly basis. Attendance register and wages register were maintained by the Respondent and the same are in their custody. Respondent used to take the signature of the Petitioner in the wage register every month while paying salary in cash. There was no contract given to any contractor who is in between Respondent and Petitioner. In view of the notification issued by the Central Government. Respondent should not engage any contract labour. Admittedly, Petitioner is an uneducated woman and she has been exploited by the Respondent by paying less than minimum wages and terminating her services abruptly without any notice consequent to her filing WP before the Hon'ble High Court of A.P. and without following the procedure contemplated under Industrial Disputes Act, 1947 as well as Contract Labour Regulation and Abolition Act. There is violation of the provisions of Sec.25F of Industrial Disputes Act, 1947. Petitioner is the only earning member of her family and consequent to illegal termination of her services it has become difficult to eak out livelihood of her family.

3. Respondent filed his counter with the averments in brief as follows:

Petitioner is supposed to approach Hon'ble Central Administrative Tribunal. Which has the requisite jurisdiction over the service matters as held by the Hon'ble Supreme Court of India in the case of Chandra Kumar Vs. Union of India and in view of the direction given in WP No.5592 of 1991 filed by Sri Kewal Singh and 17 others vide order dated 22.4.1991. Petitioner's claim is barred by limitation as services of the Petitioner said to have been terminated way back in 1995 as the contract entered into with Sri P. Narasimha, the contractor, Respondent No.2 in WP No.29210/1998 expired by 30.6.1995. On this ground also petition is not maintainable. The Nuclear Fuel Complex has constructed manufacturing plants and administrative buildings with separate enclosures and the ingress and egress of this premises is guarded by Central Industrial Security Force of Ministry of Home Affairs. In so far as housing colony spreading in an area of 260 acres is concerned, watch and ward is taken care of by a security agency. Without any restriction for the entry in the colony by the general public for the purpose of visit the residents of the colony. The over all control including allotment of quarters vests with the Estate Officer, NFC. It is necessary to pay taxes which include service charges in respect of the said colony and it has termed within the jurisdiction of the KAPRA municipality. Since service charges running into lakhs of rupees have been paid to Kapra Municipality which facilitated the Respondent approaching them for taking up the house keeping jobs in DAE colony. The house keeping works of DAE housing colony is being taken care of by Kapra municipality. The requirement is being met through helpers deployed by such persons. Making such arrangements on the deployment of helpers a running contract for a period of 12 months executing urgent works such as jungle cutting in the sprawling Nuclear Fuel Complex, cleaning of storm water drains and clearance of garbage on roads vide letter dated 30.9.1997. Similar contract was in existence in DAE housing colony where some contract labourers were also engaged. Petitioner is one among the labourers engaged by the contractor who was awarded the work of cleaning of roads and storm water drains in housing colony. Her engagement is not within the knowledge and control of the Respondent at any time. It was outside the scope of the notification dated 9.12.1976 issued by the Central Government. There was no scope for direct payment by the Respondent to the Petitioner at any point of time. Petitioner filed WP No.29210 of 1998 seeking for regularization of her services along with others. By virtue of order dated 22.10.1998 in WPMP 35709 of 1998 Hon'ble High Court of A.P. was pleased to direct that the position shall be maintained till further orders if the Petitioners were in service as on that date. Ultimately by virtue of order dated in WP 29210 of 1998 regularization of the services of the Petitioner among others was ordered.

Respondents preferred WA No.1602/2000 which was allowed vide order dated 22.3.2001. Whereunder, the impugned judgement dated 25.9.2000 in WP No.29210 of 1998 has been set aside. Having maintained silence for a period of more than 5 years Petitioner approached this Tribunal now. It is a belated claim. Statement of the Petitioner that the work done by her was perennial in nature was denied. It was a stop gap arrangement prior to approach the Municipal Authorities of Kapra for taking assistants. Petitioner never worked directly under the control of the Respondent and salary paid to her by the Respondent is outrightly denied. The engagement of the Petitioner by a contractor was outside the scope of notification dated 9.12.1976 issued by the Central Government under Contract Labour (R & A) Act, 1970. Petitioner's employer was not having any contractual obligation with her as on the date of issuance of the notification dated 9.12.1976. As per the mandate of Hon'ble Apex Court only those contract labourers who were working at the time of issuance of the said notification could be directed to be absorbed in the establishment of the Principal Employer. Petitioner was not a casual labourer on the rolls of the Respondent. Even otherwise as per the mandate of Hon'ble Apex Court casual labourers employed on temporary works are not entitled for regularization for absorption as it amounts to back door entries into service on the basis of completion of 240 days of work and the appointment to the service has to be made in accordance with the statutory rules and guidelines thereunder. Contract labourers are not entitled to the same pay scales as of the regular employees. The residential quarters are not within factory premises. Petitioner never directly engaged by the Respondent and she was never exploited. Petitioner rendered service as a contract labourer with a contractor. She cannot claim for regularization of her services. In the writ proceedings for the similar cause of action, litigation was launched seeking for same relief in this proceedings is hit by res judi cata. Petition is liable to be dismissed.

4. To substantiate the contentions of the Petitioner WW1 was examined and exhibits W1 to W8 are marked. While WW1 evidence was in progress and by virtue of the orders dated 17.3.2009, this matter and L.C. No. 29 to 40/2006 are clubbed together in L.C. 28/2006 in pursuance of the memo filed by the Petitioner and it has been ordered that evidence is to be adduced in this case i.e., LC 28/2006. Accordingly in respect of all these cases i.e., LC 28 to 40 of 2006, Smt. T. Saradha, WW1 in this case alone has been cross examined on behalf of respondents, though separate chief examination affidavits of WW1 have been filed in all these cases. Further more, Respondent's evidence has been adduced in all these cases separately by examining MW1 and Management marked Ex.M1 to M8 in each case and arguments are also advanced in all these cases and Respondent has filed his written arguments in all these cases separately. In the given circumstances and for the

sake of effective disposal of all these cases awards are being passed in all these cases separately and individually.

5. Heard the arguments of either party and written arguments of either party are also filed and they are considered.

**6. The points that arise for determination are:**

1. Whether this dispute is not maintainable before this tribunal for want of jurisdiction?
2. Whether this dispute is barred by limitation?
3. Whether the proceedings in writ petition No.29210 of 1998 operate as res judi cata?
4. Whether there is no relationship of workman and Management between the Petitioner and Respondent?
5. Whether there is termination of the service of the Petitioner by the Respondent through oral termination order dated 23.10.1998? If so, whether the said order is liable to be set aside?
6. To what relief Petitioner is entitled?

**7. Point No.1 :**

There is no dispute as to the fact that Petitioner is a workman and Respondent is an industry. But, Respondent is contending that this tribunal cannot entertain this case for the reason, that as held in the case of Sri Chandra Kumar vs. Union Of India (AIR 1997 SC 1125) Petitioner is supposed to have his legal recourse from the Central Administrative Tribunal. This contention can not be accepted as a correct contention. It is undoubtedly an industrial dispute and the Respondent is admittedly a central government organisation. This forum is Central Government Industrial Tribunal cum Labour Court whose function is to decide the industrial disputes arising from the industries which are Central Government undertakings. All the industrial disputes which arose within the jurisdiction of this tribunal and which concern with the Central Government organisations Central Government undertakings, are to be decided by this forum only as per the powers conferred on this tribunal. As to the Central Administrative Tribunal is concerned, all the service and administration related disputes pertaining to the officers and employees of all the central government offices, organisations and undertakings are to be dealt with by the said forum. Since the present dispute is an industrial dispute raised under Sec.2A(2) of Industrial Disputes Act, 1947, this tribunal got every jurisdiction to entertain this dispute.

This point is answered accordingly.

**8. Point No. 2 :**

It is the contention of the Respondent that present dispute is barred by limitation for the reason that Petitioner filed this petition five years after the Hon'ble High Court of



A.P. decided WA No.1602/2000 in WP No.29210/1998 by virtue of judgement dated 22.3.2001. In this regard, it can clearly be seen that there is no consonance between the writ proceedings and filing of this industrial dispute before this court. Further more, as on the date of filing of the present petition, no limitation was prescribed for preferring industrial disputes in the Industrial Disputes Act, 1947. Only recently i.e., in the year 2010 limitation has been prescribed for preferring industrial disputes invoking Sec.2A(2) of Industrial Disputes Act, 1947 by enacting Sec.2A(3) of the said act. Thus, as on the relevant date, there was no prescription of period of limitation for preferring industrial disputes. It is not for the courts to prescribe any period of limitation. When the Act is silent as to the question of limitation, the courts are bound to entertain the cases, without looking into the belatedness or otherwise in filing the same, as it is the duty of the courts to interpret and implement the law enacted by the parliament only, but not to substitute or incorporate any new law. In the given circumstances, it is to be held that this petition is not barred by limitation.

This point is answered accordingly.

#### 9. Point No. 3 :

The writs filed invoking the extraordinary jurisdiction of the Constitutional Courts provided under Article 226 of Constitution of India will never act as *res judi cata* for the cases filed before the civil courts and tribunals which are clothed with ordinary jurisdiction by the various enactments. This tribunal is clothed with the ordinary jurisdiction to entertain industrial disputes. Whereas while preferring writs before Hon'ble High Court of A.P. the Petitioner has invoked extra ordinary jurisdiction provided under Article 226 of Constitution of India. Further more, Petitioner and others have withdrawn the special leave petition filed by them challenging the judgement dated 22.3.2001 rendered in the rendered by Hon'ble High Court of A.P. in WA No.1602/2000 only to raise an industrial dispute and said withdrawal has been accepted by Hon'ble Supreme Court of India, as can be seen in Ex.W3 the order rendered in Special Leave to Appeal(Civil) No.13451/2001.

10. Further more, the writ proceedings were launched by the Petitioner and other similarly placed persons seeking for regularisation of their services with the Respondent. Whereas, the present industrial dispute is raised by the Petitioner, consequent to termination of her services while the writ appeal was pending, seeking for setting aside the oral termination order dated 23.10.1998 of the Respondent, whereunder Petitioner's services were terminated consequently directing the Respondent to reinstate the Petitioner into service with attendant benefits. Therefore, cause of action for filing the writ proceeding and for raising the present industrial dispute and also nature of these two proceedings are totally different and distinct.

11. In the given circumstances, it can safely be held that the proceedings of WP No.29210/1998 will not act as *res judi cata* for the present proceedings.

This point is answered accordingly.

#### 12. Point No. 4 :

Admittedly, Petitioner has worked with the Respondent organisation. It can be said so since, in their counter Respondent has not disputed regarding the fact that Petitioner has worked with them.

13. It is the contention of the Petitioner that she has been engaged by the Respondent for cleaning, sweeping, dusting, watching bend dumps, the work, nature of which is perennial and that the Petitioner was working directly under the control of the Respondent receiving salary directly from the Respondent but however, Respondent brought non-existing contractor between the Petitioner and Respondent to show that there is no master and servant relationship between them.

14. Whereas, Respondent is contending that house keeping works in DAE housing colony, in which the staff of the Respondent unit are housed, is being taken care of by CAPRA municipality, whereas requirement of plant of the Respondent is being met through helpers(COS) deployed for the said purpose, however, prior to making this arrangements through CAPRA municipality and / or deployment of helpers(COS) a running contract for a period of 12 months was awarded for executing urgent works such as, jungle cutting in the NFC works as well as DAE Housing colony, where some contract labourers were engaged and that Petitioner is one among the labourers engaged by the contractor who was awarded with the work of cleaning of roads and storm water drains in housing colony.

15. From the above contention and counter contention of the Petitioner and Respondent, what one can gather is, that admittedly Petitioner has been working for the Respondent unit, and she was awarded with the work of cleaning of the premises, but it is the contention of the Respondent, contrary to the contentions of the Petitioner, that Petitioner has been a contract labourer engaged by the contractor to whom the cleaning work was entrusted by the Respondent but not a person directly engaged by the Respondent.

16. When once Respondent accepted the fact that Petitioner has worked with him but claimed that there is an intermediary between them i.e., a contractor, it is for the Respondent to establish before the court that there has been such contractor and the said contractor engaged the Petitioner for cleaning work entrusted to her by the Respondent. Further more, it is to be verified by the court, if it is established before the court that there has been such a contractor, whether the principal employer i.e., the Respondent was exercising control over the functioning



of the Petitioner or whether through the contractor only the work was being done. Who is exercising control over the conditions of the service of the Petitioner is a crucial aspect to decide whether there is master and servant relationship between the principal employer and the workman or whether the alleged contractor himself remained as a master for the workman and other such relevant aspects. In this regard, it is well established legal principle that “the Industrial Tribunal/court will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere rule/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer.” This is the legal principle laid down by the Hon’ble Supreme Court of India in the case of Steel Authority of India and ors. Vs. National Union Waterfront Workers and Others [(2001) 7 SCC page 1], which is relied upon by Learned Counsel for the Respondent himself.

17. All the above referred crucial aspects in this case can be gathered from the relevant record maintained by the Respondent in connection with the alleged contract entrusted to the contractor regarding the way in which the work was extracted from the Petitioner and other workers and also the mode of payment of wages to the Petitioner and other workmen and other related aspects. It is the burden of the Respondent to place all the relevant record before this tribunal. But the only record produced by the Respondent regarding the alleged contract is Ex.M4, the letter dated 30.9.97 said to have been issued by the Respondent to one Sri P. Ramana Reddy a contractor. There is no record to show that Respondent called for tenders for given contract work and selected any persons as contractors through any selection process. While she was under cross examination MW1 had admitted that they have not filed any document to show that contractor was engaged or agreement was entered between contractor and Management.

18. Further, in Ex.M4 it is averred that “A daily report indicating the details of labourers and vehicle engaged on the work for each day shall be submitted to the Engineer-in-charge, before 10.00 AM on every working day. Payment of wages to contract labourers shall be as per regulations laid down in CPWD contractors labour regulation to be applicable to Nuclear Fuel Complex. Intimation regarding wage period, date of payment, place and time of disbursement shall be given to the Engineer-in-charge within 2 (two) weeks from the date of issue of this order”. If the work was done in furtherance of Ex.M4 order, in every likelihood the daily report indicating details of labourers and vehicles engaged for the work, would have

been submitted by the contractor to the Engineer-in-charge on every working day and further intimation regarding the wage period date of payment, place and time of disbursement of wages also would have been given to the Engineer-in-charge and such documents will be available with the Respondent. But no such documents are placed before the court which indicates that there are no such documents and therefore Ex.M4 has never been acted upon.

19. In the absence of proper proof of the fact that Petitioner has been a labourer worked under a contractor but not a direct employee of the Respondent, it is to be taken that she is the direct employee of the Respondent for the reason that it is an admitted fact that Petitioner worked for the Respondent as a sweeper. It can be taken that there is no proper proof of the contentions of the Respondent that Petitioner has been working under a contractor, for the above referred reason that Respondent failed to produce that all the relevant documents which will certainly will be in their custody, if actually Petitioner has been working under a contractor to whom the Respondent entrusted the cleaning of the premises as a contract work. Therefore, it can safely be held that Respondent failed to establish that Petitioner has been working under a contractor who has been entrusted with the job of cleaning of their premises but not their direct employee.

20. In view of the foregone discussion it can safely be held that there is relationship of workman and Management between the Petitioner and the Respondent which indicates that there is master and servant relationship between them.

This point is answered accordingly.

#### **21. Point No. 5 :**

As can be gathered from the line of the defence taken in this case by the Respondent and the arguments built up and advanced for them, what one can see is that they are meeting the claim of the Petitioner, as if the Petitioner is seeking for regularization of services. But the fact remains that Petitioner is seeking for setting aside the order under which Petitioner’s services were terminated and for reinstatement into service and other consequential reliefs. In the writ proceedings Petitioner sought for regularization of service but while writ appeal was pending disposal, as the Petitioner’s services were terminated, this industrial dispute is raised seeking for setting aside the said termination order and consequential reinstatement of the Petitioner into service and for grant of other attendant benefits. Ignoring these aspects Respondent is advancing their arguments regarding the claim of the Petitioner in the writ proceedings for regularization of services. The said arguments are to be taken as not helpful for the proceedings of this case. The various legal precedents cited for the Respondent are also not helpful for furtherance of this case as they are all in respect of the regularization of the services of the contract employees. In this case, the relief

sought for is not for regularization of service but it is for reinstatement into service. But in this case also the question whether Petitioner has been a contract labourer or other wise is to be decided and it has been decided while deciding Point No.4 alone.

22. Evidently, Respondent ceased to take services of the Petitioner since 23.10.1998. In their counter the Respondent has chosen to plead that the contractor has terminated the services of the Petitioner in the year 1998 but as discussed above while deciding point No.4 Respondent failed to establish that there has been a contractor as an intermediary between them and the Petitioner. Thus, it can safely be inferred that Respondent is the organization which terminated the services of the Petitioner.

23. It is claim of the Petitioner that said termination is by way of an oral order and therefore, it is not possible for the Petitioner to produce any termination order. But the fact remains that even as per contentions of the Respondent they ceased to take the services of the Petitioner since the year 1998. Therefore, it can reasonably be accepted that there has been oral termination of the Petitioner with effect from 23.10.1998.

24. It is well established principle of law that every termination spells retrenchment. With this regard there is no dispute.

25. Sec.25F of the Industrial Disputes Act, 1947 deals with conditions precedent to retrenchment of workman. Sec.25 F reads as follows:-

“25-F: Conditions precedent to retrenchment of workmen:- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

- (a) The workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice.
- (b) The workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and
- (c) Notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the official Gazette].”

26. As can be gathered from the facts on record, Petitioner worked for one year continuously even as per the contentions of the Respondent, leaving alone the contentions of the Petitioner that she has been in continuous service with the Respondent since years together which has not been disproved by producing the record maintained by the Respondent regarding the service of the Petitioner with the Respondent. Therefore, it can safely be held that Petitioner comes under the purview of the workman mentioned in Sec.25F by working with the Respondent for not less than one year. As per Sec.25F such a workman can not be retrenched, until he has been given one month's notice in writing indicating the reasons for retrenchment and only after expiry of the period of notice or otherwise by making payment of wages in lieu of such notice for the period of notice. Further more, the workman has to be paid retrenchment compensation as mentioned in Sec.25F (b) and there shall be compliance of Sec.25F (c).

27. Unless there is compliance of all the above mentioned mandatory pre requisites the retrenchment of the workman is to be held as null and void, illegal and inoperative, as per the well established legal principles laid down by Hon'ble the Apex Court. In the case of Devinder Singh Vs. Municipal Council, Sanaur, {(2011) 6 SCC page 584} and in the case of Anup Sharma Vs. Public Health Division [(2010) 5 SCC 497] Hon'ble Supreme Court of India considered the effect of violation of Sec.25F and held that termination of service of a workman without complying with the mandatory provisions contained under Sec.25F (A) and (B) should ordinarily result in his reinstatement.

28. In the present case, evidently there is no compliance of the mandatory pre-requisites contemplated under Sec.25F (a) and (b) of Industrial Disputes Act, 1947. Therefore, the impugned termination order is bad and is liable to be set aside and Petitioner is entitled for reinstatement into service.

This point is answered accordingly.

#### 29. Point No. 6 :

In view of the findings given in Point No.5 above, the impugned oral termination order dated 23.10.1998 is liable to be set aside. Consequently Petitioner is entitled for reinstatement into service as Sweeper with continuity of service. Considering the way in which the Petitioner's services were terminated while the writ proceedings launched by the Petitioner seeking for regularization is pending, it can safely be held that Petitioner is entitled for all back wages, and all other attendant benefits.

This point is answered accordingly.

#### 30. Result :

In the result, petition is allowed. The oral order dated 23.10.1998 of the Respondent terminating the services of

the Petitioner is hereby set aside. Petitioner shall be reinstated into service forthwith. Respondent shall pay back wages to the Petitioner for the period from 23.10.1998 the date of termination of her services till the date of the Petitioner's reinstatement into service. Petitioner is entitled for all other consequential benefits as well.

Award passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant corrected by me on this the 30th day of August, 2013.

M. VIJAYA LAKSHMI, Presiding Officer

#### Appendix of evidence

| Witnesses examined for<br>the Petitioner | Witnesses examined for<br>the Respondent |
|--|--|
| WW1: Smt. G. Ambhi                       | MW1: Smt. A. Rama Devi                   |

#### Documents marked for the Petitioner

|        |   |
|--------|---|
| Ex.W1: | Photostat copy of order in WPNo.29210/1998 dt.25.9.2000                   |
| Ex.W2: | Photostat copy of representation dt.11.4.98                               |
| Ex.W3: | Photostat copy of order in SLA (Civil) Np.13451/2001                      |
| Ex.W4: | Photostat copy of representation dt.3.5.96                                |
| Ex.W5: | Photostat copy of provisional receipt from Kapra Municipality dt.13.11.98 |
| Ex.W6: | Photostat copy of representation dt.9.10.98                               |
| Ex.W7: | Photostat copy of order in WA No.1602/1999                                |
| Ex.W8: | Photostat copy of representation dt.24.10.2005                            |

#### Documents marked for the Respondent

|        |   |
|--------|---|
| Ex.M1: | Photostat copy of order in WP No.5592/1991  |
| Ex.M2: | Photostat copy of receipt from Kapra Municipality dt.13.11.98                           |
| Ex.M3: | Photostat copy of letter dt.9.1.1999 issued by NFC to Commissioner, Kapra Municipality. |
| Ex.M4: | Photostat copy of letter dt. 30.9.97 issued by NFC to Sri P. Ramana Reddy, Contractor   |
| Ex.M5: | Photostat copy of order in contempt case No.1903/98                                     |
| Ex.M6: | Photostat copy of order in WPNo.29210/1998 dt.25.9.2000                                 |
| Ex.M7: | Photostat copy of order in WA No.1602/1999  |
| Ex.M8: | Photostat copy of receipt from Kapra Municipality dt.1.1.1999.                          |

नई दिल्ली, 17 जनवरी, 2014

**का.आ. 444.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार चीफ एंजीन्यूटिव नुक्लेअर फ्यूल काम्प्लेक्स डिपार्टमेंट ऑफ एटॉमिक एनर्जी, हैदराबाद के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 30/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-1-2014 को प्राप्त हुआ था।

[सं. एल-42012/03/2014-आई आर (डीयू)]

पी.के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 17th January, 2014

**S.O. 444.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 30/2006) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Chief Executive, Nuclear Fuel Complex, Department of Atomic Energy, Hyderabad and their workman, which was received by the Central Government on 13-1-2014.

[No. L-42012/03/2014-IR (DU)]

P.K. VENUGOPAL, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

**Present :** Smt. M. Vijaya Lakshmi, Presiding Officer

Dated the 30th day of August, 2013

#### INDUSTRIAL DISPUTE L.C. No. 30/2006

#### Between:

Smt. G. Bharathamma,  
W/o G. Narayana,  
R/o H.No.C-37/2,  
Ashok Nagar, ECIL Post,  
Ranga Reddy District,  
Hyderabad

.....Petitioner

#### AND

Chief Executive,  
Nuclear Fuel Complex,  
Department of Atomic Energy,  
Hyderabad – 500 062

....Respondent

#### Appearances:

For the Petitioner : M/s. G. Ravi Mohan, G. Nararsh Kumar, Vikas Sharma, K. Bhaskar & G. Pavan Kumar, Advocates

For the Respondent : Sri K. Suryanarayana, Advocate

### AWARD

This is a petition filed invoking Sec.2A(2) of Industrial Disputes Act, 1947 by the Petitioner who is claiming to be the person who worked as sweeper in the Respondent unit seeking for setting aside the oral termination of services dated 23.10.1998 by the Respondent consequently to direct the Respondent to reinstate the Petitioner into service with continuity of service, back wages and all other attendant benefits.

2. The averments made in the petition in brief are as follows:

Petitioner worked as Sweeper in the Respondent unit along with other similarly situated persons. Petitioner was engaged for cleaning, sweeping, dusting, watching of bend dumps. This work is perennial nature. Petitioner was working directly under the control of the Respondent and the salary of the Petitioner is being paid directly by the Respondent. However, Respondent brought non-existing contractor between the Petitioner and the Respondent, to show that there is no master and servant relationship between them. The Central Government, exercising the power under Sec.10 of Abolition of Contract Labour Act on the basis of the recommendations and in conciliation with the Central Advisory Board constituted under Sec.10 (1) of the said act issued notification dated 9.12.1976 prohibiting employment of contract labourers in respect of cleaning sweeping, dusting and watching of the building owned by or occupied by the establishment in respect of which the appropriate government under the said act is the Central Government. Petitioner's job is cleaning and sweeping. Once engaging contract labourers for said job is abolished, there is an obligation for the Respondent to consider regularising the Petitioner and similarly placed persons basing on the availability of vacancies. Even as per the mandate of the Apex Court it is the statutory obligation of the Principal Employer to absorb the contract labourer once the contract labour is abolished and to treat them as regular employees. It is the statutory obligation under Sections 11, 19 and 20 of the Factories Act to maintain cleanliness of the area in which the factory is situated. Respondent company is a factory. Even as per the condition contained in format of the license under Contract Labour Regulation and Abolition Act, Petitioner is entitled for regular pay of the minimum wages prescribed by the Government. Initially Petitioner was paid Rs.25/- per day. Subsequently it was enhanced to Rs. 45/- per day. Petitioner worked from May, 1992 to October, 1998 continuously without any break in service. Petitioner along with other similarly situated persons filed WP No.29210 of 1998 before the Hon'ble High Court of A.P. for absorbing as a regular employee and to pay other benefits on par with other employees. During the pendency of the said Writ petition, Petitioner was terminated from the service in the month of

October, 1998 and the writ petition was allowed by an order dated 25.9.2000. Against the said order WA No. 1602/1999 was filed by the Respondent before the Division Bench of the Hon'ble High Court of A.P. The said appeal was allowed on 23.2.2001. Against the said order Petitioner filed Special Leave to Appeal (Civil) No.13451/2001 before the Hon'ble Supreme Court of India and the same was withdrawn with a liberty to raise industrial dispute before the appropriate forum on 9.11.2001. Thus, the Petitioner raised the dispute. The premises of the Respondent including the residential quarters of the officers of the Respondent is in the same campus, i.e., within the premises of the Respondent. Cleaning activities of the Respondent quarters which includes, roads and maintenance of the buildings is to be taken care off by the Respondents only. An officer from the civil department used to take care of the work in respect of cleaning and maintenance of the factory buildings including the residential quarters. No work was entrusted to any outsider at any point of time i.e., contractor. Respondent used to maintain details of casual labourers, who were entrusted with the works of cleaning, gardening, civil works etc., which are perennial in nature. Petitioner was deputed to work as sweeper. Respondent never issued any appointment letter. However, salary was being paid by the Respondent Management on monthly basis. Attendance register and wages register were maintained by the Respondent and the same are in their custody. Respondent used to take the signature of the Petitioner in the wage register every month while paying salary in cash. There was no contract given to any contractor who is in between Respondent and Petitioner. In view of the notification issued by the Central Government, Respondent should not engage any contract labour. Admittedly, Petitioner is an uneducated woman and she has been exploited by the Respondent by paying less than minimum wages and terminating her services abruptly without any notice consequent to her filing WP before the Hon'ble High Court of A.P. and without following the procedure contemplated under Industrial Disputes Act, 1947 as well as Contract Labour Regulation and Abolition Act. There is violation of the provisions of Sec.25F of Industrial Disputes Act, 1947. Petitioner is the only earning member of her family and consequent to illegal termination of her services it has become difficult to eak out livelihood of her family.

3. Respondent filed his counter with the averments in brief as follows:

Petitioner is supposed to approach Hon'ble Central Administrative Tribunal. Which has the requisite jurisdiction over the service matters as held by the Hon'ble Supreme Court of India in the case of Chandra Kumar Vs. Union of India and in view of the direction given in WP No.5592 of 1991 filed by Sri Kewal Singh and 17 others vide order dated 22.4.1991. Petitioner's claim is barred by limitation as services of the Petitioner said to have been



terminated way back in 1995 as the contract entered into with Sri P. Narasimha, the contractor, Respondent No.2 in WP No.29210/1998 expired by 30.6.1995. On this ground also petition is not maintainable. The Nuclear Fuel Complex has constructed manufacturing plants and administrative buildings with separate enclosures and the ingress and egress of this premises is guarded by Central Industrial Security Force of Ministry of Home Affairs. In so far as housing colony spreading in an area of 260 acres is concerned, watch and ward is taken care of by a security agency. Without any restriction for the entry in the colony by the general public for the purpose of visit the residents of the colony. The over all control including allotment of quarters vests with the Estate Officer, NFC. It is necessary to pay taxes which include service charges in respect of the said colony and it has termed within the jurisdiction of the KAPRA municipality. Since service charges running into lakhs of rupees have been paid to Kapra Municipality which facilitated the Respondent approaching them for taking up the house keeping jobs in DAE colony. The house keeping works of DAE housing colony is being taken care of by Kapra municipality. The requirement is being met through helpers deployed by such persons. Making such arrangements on the deployment of helpers a running contract for a period of 12 months executing urgent works such as jungle cutting in the sprawling Nuclear Fuel Complex, cleaning of storm water drains and clearance of garbage on roads vide letter dated 30.9.1997. Similar contract was in existence in DAE housing colony where some contract labourers were also engaged. Petitioner is one among the labourers engaged by the contractor who was awarded the work of cleaning of roads and storm water drains in housing colony. Her engagement is not within the knowledge and control of the Respondent at any time. It was outside the scope of the notification dated 9.12.1976 issued by the Central Government. There was no scope for direct payment by the Respondent to the Petitioner at any point of time. Petitioner filed WP No.29210 of 1998 seeking for regularization of her services along with others. By virtue of order dated 22.10.1998 in WPMP 35709 of 1998 Hon'ble High Court of A.P. was pleased to direct that the position shall be maintained till further orders if the Petitioners were in service as on that date. Ultimately by virtue of order dated in WP 29210 of 1998 regularization of the services of the Petitioner among others was ordered. Respondents preferred WA No.1602/2000 which was allowed vide order dated 22.3.2001. Whereunder, the impugned judgement dated 25.9.2000 in WP No.29210 of 1998 has been set aside. Having maintained silence for a period of more than 5 years Petitioner approached this Tribunal now. It is a belated claim. Statement of the Petitioner that the work done by her was perennial in nature was denied. It was a stop gap arrangement prior to approach the Municipal Authorities of Kapra for taking assistants. Petitioner never worked directly under the control of the Respondent and salary paid to her by the Respondent is

outrightly denied. The engagement of the Petitioner by a contractor was outside the scope of notification dated 9.12.1976 issued by the Central Government under Contract Labour (R & A) Act, 1970. Petitioner's employer was not having any contractual obligation with her as on the date of issuance of the notification dated 9.12.1976. As per the mandate of Hon'ble Apex Court only those contract labourers who were working at the time of issuance of the said notification could be directed to be absorbed in the establishment of the Principal Employer. Petitioner was not a casual labourer on the rolls of the Respondent. Even otherwise as per the mandate of Hon'ble Apex Court casual labourers employed on temporary works are not entitled for regularization for absorption as it amounts to back door entries into service on the basis of completion of 240 days of work and the appointment to the service has to be made in accordance with the statutory rules and guidelines thereunder. Contract labourers are not entitled to the same pay scales as of the regular employees. The residential quarters are not within factory premises. Petitioner never directly engaged by the Respondent and she was never exploited. Petitioner rendered service as a contract labourer with a contractor. She can not claim for regularization of her services. In the writ proceedings for the similar cause of action, litigation was launched seeking for same relief in this proceedings is hit by res judi cata. Petition is liable to be dismissed.

4. To substantiate the contentions of the Petitioner WW1 was examined and exhibits W1 to W8 are marked. While WW1 evidence was in progress and by virtue of the orders dated 17.3.2009, this matter i.e.LC No.30/2006 along with other L.C. Nos. taking from L.C. No. 29 to 40/2006 are clubbed together in L.C. 28/2006 in pursuance of the memo filed by the Petitioner and it has been ordered that evidence is to be adduced in first case i.e., LC 28/2006. Accordingly in respect of all these cases i.e., LC 28 to 40 of 2006, Smt. T. Saradha, WW1 in L.C. 28/2006 alone has been cross examined on behalf of respondents, though separate chief examination affidavits of WW1 have been filed in all these cases. Further more, Respondent's evidence has been adduced in all these cases separately by examining MW1 and Management marked Ex.M1 to M8 in each case and arguments are also advanced in all these cases and Respondent has filed his written arguments in all these cases separately. In the given circumstances and for the sake of effective disposal of all these cases awards are being passed in all these cases separately and individually.

5. Heard the arguments of either party and written arguments of either party are also filed and they are considered.

6. The points that arise for determination are:

1. Whether this dispute is not maintainable before this tribunal for want of jurisdiction?
2. Whether this dispute is barred by limitation?



3. Whether the proceedings in writ petition No.29210 of 1998 operate as res judi cata?
4. Whether there is no relationship of workman and Management between the Petitioner and Respondent?
5. Whether there is termination of the service of the Petitioner by the Respondent through oral termination order dated 23.10.1998? If so, whether the said order is liable to be set aside?
6. To what relief Petitioner is entitled?
7. **Point No.1 :**

There is no dispute as to the fact that Petitioner is a workman and Respondent is an industry. But, Respondent is contending that this tribunal can not entertain this case for the reason, that as held in the case of Sri Chandra Kumar vs. Union of India (AIR 1997 SC 1125) Petitioner is supposed to have his legal recourse from the Central Administrative Tribunal. This contention can not be accepted as a correct contention. It is undoubtedly an industrial dispute and the Respondent is admittedly a Central Government Organisation. This forum is Central Government Industrial Tribunal-cum-Labour Court whose function is to decide the industrial disputes arising from the industries which are Central Government undertakings. All the industrial disputes which arose within the jurisdiction of this tribunal and which concern with the Central Government Organisations, Central Government undertakings, are to be decided by this forum only as per the powers conferred on this tribunal. As to the Central Administrative Tribunal is concerned, all the service and administration related disputes pertaining to the officers and employees of all the Central Government Offices, Organisations and undertakings are to be dealt with by the said forum. Since the present dispute is an industrial dispute raised under Sec.2A(2) of Industrial Disputes Act, 1947, this tribunal got every jurisdiction to entertain this dispute.

This point is answered accordingly.

#### 8. **Point No. 2 :**

It is the contention of the Respondent that present dispute is barred by limitation for the reason that Petitioner filed this petition five years after the Hon'ble High Court of A.P. decided WA No.1602/2000 in WP No.29210/1998 by virtue of judgement dated 22.3.2001. In this regard, it can clearly be seen that there is no consonance between the writ proceedings and filing of this industrial dispute before this court. Further more, as on the date of filing of the present petition, no limitation was prescribed for preferring industrial disputes in the Industrial Disputes Act, 1947. Only recently i.e., in the year 2010 limitation has been prescribed for preferring industrial disputes invoking Sec.2A(2) of Industrial Disputes Act, 1947 by enacting Sec.2A(3) of the said act. Thus, as on the relevant date,

there was no prescription of period of limitation for preferring industrial disputes. It is not for the courts to prescribe any period of limitation. When the Act is silent as to the question of limitation, the courts are bound to entertain the cases, without looking into the belatedness or otherwise in filing the same, as it is the duty of the courts to interpret and implement the law enacted by the parliament only, but not to substitute or incorporate any new law. In the given circumstances, it is to be held that this petition is not barred by limitation.

This point is answered accordingly.

#### 9. **Point No.3 :**

The writs filed invoking the extraordinary jurisdiction of the Constitutional Courts provided under Article 226 of Constitution of India will never act as res judicata for the cases filed before the civil courts and tribunals which are clothed with ordinary jurisdiction by the various enactments. This tribunal is clothed with the ordinary jurisdiction to entertain industrial disputes. Whereas while preferring writs before Hon'ble High Court of A.P. the Petitioner has invoked extra ordinary jurisdiction provided under Article 226 of Constitution of India. Further more, Petitioner and others have withdrawn the special leave petition filed by them challenging the judgement dated 22.3.2001 rendered in the rendered by Hon'ble High Court of A.P. in WA No.1602/2000 only to raise an industrial dispute and said withdrawal has been accepted by Hon'ble Supreme Court of India, as can be seen in Ex.W3 the order rendered in Special Leave to Appeal(Civil) No.13451/2001.

10. Further more, the writ proceedings were launched by the Petitioner and other similarly placed persons seeking for regularisation of their services with the Respondent. Whereas, the present industrial dispute is raised by the Petitioner, consequent to termination of her services while the writ appeal was pending, seeking for setting aside the oral termination order dated 23.10.1998 of the Respondent, whereunder Petitioner's services were terminated consequently directing the Respondent to reinstate the Petitioner into service with attendant benefits. Therefore, cause of action for filing the writ proceeding and for raising the present industrial dispute and also nature of these two proceedings are totally different and distinct.

11. In the given circumstances, it can safely be held that the proceedings of WP No.29210/1998 will not act as res judi cata for the present proceedings.

This point is answered accordingly.

#### 12. **Point No. 4 :**

Admittedly, Petitioner has worked with the Respondent organisation. It can be said so since, in their counter Respondent has not disputed regarding the fact that Petitioner has worked with them.

13. It is the contention of the Petitioner that she has been engaged by the Respondent for cleaning, sweeping, dusting, watching bend dumps, the work, nature of which is perennial and that the Petitioner was working directly under the control of the Respondent receiving salary directly from the Respondent but however, Respondent brought non-existing contractor between the Petitioner and Respondent to show that there is no master and servant relationship between them.

14. Whereas, Respondent is contending that house keeping works in DAE Housing Colony, in which the staff of the Respondent unit are housed, is being taken care of by CAPRA Municipality, whereas requirement of plant of the Respondent is being met through helpers(COS) deployed for the said purpose, however, prior to making this arrangements through CAPRA Municipality and / or deployment of helpers(COS) a running contract for a period of 12 months was awarded for executing urgent works such as, jungle cutting in the NFC works as well as DAE Housing Colony, where some contract labourers were engaged and that Petitioner is one among the labourers engaged by the contractor who was awarded with the work of cleaning of roads and storm water drains in housing colony.

15. From the above contention and counter contention of the Petitioner and Respondent, what one can gather is, that admittedly Petitioner has been working for the Respondent unit, and she was awarded with the work of cleaning of the premises, but it is the contention of the Respondent, contrary to the contentions of the Petitioner, that Petitioner has been a contract labourer engaged by the contractor to whom the cleaning work was entrusted by the Respondent but not a person directly engaged by the Respondent.

16. When once Respondent accepted the fact that Petitioner has worked with him but claimed that there is an intermediary between them i.e., a contractor, it is for the Respondent to establish before the court that there has been such contractor and the said contractor engaged the Petitioner for cleaning work entrusted to her by the Respondent. Further more, it is to be verified by the court, if it is established before the court that there has been such a contractor, whether the principal employer i.e., the Respondent was exercising control over the functioning of the Petitioner or whether through the contractor only the work was being done. Who is exercising control over the conditions of the service of the Petitioner is a crucial aspect to decide whether there is master and servant relationship between the principal employer and the workman or whether the alleged contractor himself remained as a master for the workman and other such relevant aspects. In this regard, it is well established legal principle that “the Industrial Tribunal/court will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result

for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere rule/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer.” This is the legal principle laid down by the Hon’ble Supreme Court of India in the case of Steel Authority of India and Ors. Vs. National Union Waterfront Workers and Others[(2001) 7 SCC page 1], which is relied upon by Learned Counsel for the Respondent himself.

17. All the above referred crucial aspects in this case can be gathered from the relevant record maintained by the Respondent in connection with the alleged contract entrusted to the contractor regarding the way in which the work was extracted from the Petitioner and other workers and also the mode of payment of wages to the Petitioner and other workmen and other related aspects. It is the burden of the Respondent to place all the relevant record before this tribunal. But the only record produced by the Respondent regarding the alleged contract is Ex.M4, the letter dated 30.9.97 said to have been issued by the Respondent to one Sri P. Ramana Reddy a contractor. There is no record to show that Respondent called for tenders for given contract work and selected any persons as contractors through any selection process. While she was under cross examination MW1 had admitted that they have not filed any document to show that contractor was engaged or agreement was entered between contractor and Management.

18. Further, in Ex.M4 it is averred that “A daily report indicating the details of labourers and vehicle engaged on the work for each day shall be submitted to the Engineer-in-charge, before 10.00 AM on every working day. Payment of wages to contract labourers shall be as per regulations laid down in CPWD contractors labour regulation to be applicable to Nuclear Fuel Complex. Intimation regarding wage period, date of payment, place and time of disbursement shall be given to the Engineer-in-charge within 2 (two) weeks from the date of issue of this order”. If the work was done in furtherance of Ex.M4 order, in every likelihood the daily report indicating details of labourers and vehicles engaged for the work, would have been submitted by the contractor to the Engineer-in-charge on every working day and further intimation regarding the wage period date of payment, place and time of disbursement of wages also would have been given to the Engineer-in-charge and such documents will be available with the Respondent. But no such documents are placed before the court which indicates that there are no such documents and therefore Ex.M4 has never been acted upon.

19. In the absence of proper proof of the fact that Petitioner has been a labourer worked under a contractor

but not a direct employee of the Respondent, it is to be taken that she is the direct employee of the Respondent for the reason that it is an admitted fact that Petitioner worked for the Respondent as a sweeper. It can be taken that there is no proper proof of the contentions of the Respondent that Petitioner has been working under a contractor, for the above referred reason that Respondent failed to produce that all the relevant documents which will certainly will be in their custody, if actually Petitioner has been working under a contractor to whom the Respondent entrusted the cleaning of the premises as a contract work. Therefore, it can safely be held that Respondent failed to establish that Petitioner has been working under a contractor who has been entrusted with the job of cleaning of their premises but not their direct employee.

20. In view of the foregone discussion it can safely be held that there is relationship of workman and Management between the Petitioner and the Respondent which indicates that there is master and servant relationship between them.

This point is answered accordingly.

#### 21. Point No. 5 :

As can be gathered from the line of the defence taken in this case by the Respondent and the arguments built up and advanced for them, what one can see is that they are meeting the claim of the Petitioner, as if the Petitioner is seeking for regularization of services. But the fact remains that Petitioner is seeking for setting aside the order under which Petitioner's services were terminated and for reinstatement into service and other consequential reliefs. In the writ proceedings Petitioner sought for regularization of service but while writ appeal was pending disposal, as the Petitioner's services were terminated, this industrial dispute is raised seeking for setting aside the said termination order and consequential reinstatement of the Petitioner into service and for grant of other attendant benefits. Ignoring these aspects Respondent is advancing their arguments regarding the claim of the Petitioner in the writ proceedings for regularization of services. The said arguments are to be taken as not helpful for the proceedings of this case. The various legal precedents cited for the Respondent are also not helpful for furtherance of this case as they are all in respect of the regularization of the services of the contract employees. In this case, the relief sought for is not for regularization of service but it is for reinstatement into service. But in this case also the question whether Petitioner has been a contract labourer or other wise is to be decided and it has been decided while deciding Point No.4 alone.

22. Evidently, Respondent ceased to take services of the Petitioner since 23.10.1998. In their counter the Respondent has chosen to plead that the contractor has terminated the services of the Petitioner in the year 1998

but as discussed above while deciding point No.4 Respondent failed to establish that there has been a contractor as an intermediary between them and the Petitioner. Thus, it can safely be inferred that Respondent is the organization which terminated the services of the Petitioner.

23. It is claim of the Petitioner that said termination is by way of an oral order and therefore, it is not possible for the Petitioner to produce any termination order. But the fact remains that even as per contentions of the Respondent they ceased to take the services of the Petitioner since the year 1998. Therefore, it can reasonably be accepted that there has been oral termination of the Petitioner with effect from 23.10.1998.

24. It is well established principle of law that every termination spells retrenchment. With this regard there is no dispute.

25. Sec.25F of the Industrial Disputes Act, 1947 deals with conditions precedent to retrenchment of workman. Sec. 25 F reads as follows:-

“25-F: Conditions precedent to retrenchment of workmen:- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice.
- (b) The workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and
- (c) Notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].”

26. As can be gathered from the facts on record, Petitioner worked for one year continuously even as per the contentions of the Respondent, leaving alone the contentions of the Petitioner that she has been in continuous service with the Respondent since years together which has not been disproved by producing the record maintained by the Respondent regarding the service of the Petitioner with the Respondent. Therefore, it can safely be held that Petitioner comes under the purview of the workman mentioned in Sec.25F by working with the Respondent for not less than one year. As per Sec.25F

such a workman can not be retrenched, until he has been given one month's notice in writing indicating the reasons for retrenchment and only after expiry of the period of notice or otherwise by making payment of wages in lieu of such notice for the period of notice. Further more, the workman has to be paid retrenchment compensation as mentioned in Sec.25F (b) and there shall be compliance of Sec.25F (c).

27. Unless there is compliance of all the above mentioned mandatory pre-requisites the retrenchment of the workman is to be held as null and void, illegal and inoperative, as per the well established legal principles laid down by Hon'ble the Apex Court. In the case of Devinder Singh Vs. Municipal Council, Sanaur, {(2011) 6 SCC page 584} and in the case of Anup Sharma Vs. Public Health Division [(2010) 5 SCC 497] Hon'ble Supreme Court of India considered the effect of violation of Sec.25F and held that termination of service of a workman without complying with the mandatory provisions contained under Sec. 25F (A) and (B) should ordinarily result in his reinstatement.

28. In the present case, evidently there is no compliance of the mandatory pre-requisites contemplated under Sec. 25F (a) and (b) of Industrial Disputes Act, 1947. Therefore, the impugned termination order is bad and is liable to be set aside and Petitioner is entitled for reinstatement into service.

This point is answered accordingly.

### 29. Point No.6:

In view of the findings given in Point No.5 above, the impugned oral termination order dated 23.10.1998 is liable to be set aside. Consequently Petitioner is entitled for reinstatement into service as Sweeper with continuity of service. Considering the way in which the Petitioner's services were terminated while the writ proceedings launched by the Petitioner seeking for regularization is pending, it can safely be held that Petitioner is entitled for all back wages, and all other attendant benefits.

This point is answered accordingly.

### 30. Result:-

In the result, petition is allowed. The oral order dated 23.10.1998 of the Respondent terminating the services of the Petitioner is hereby set aside. Petitioner shall be reinstated into service forthwith. Respondent shall pay back wages to the Petitioner for the period from 23.10.1998 the date of termination of her services till the date of the Petitioner's reinstatement into service. Petitioner is entitled for all other consequential benefits as well.

Award passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant corrected by me on this the 30th day of August, 2013.

M. VIJAYA LAKSHMI, Presiding Officer

### Appendix of evidence

Witnesses examined  
for the Petitioner

Witnesses examined for the  
Respondent

WW1: Smt. G. Bharathamma MW1: Smt. A. Rama Devi

### Documents marked for the Petitioner

Ex.W1: Photostat copy of order in WPNo.29210/1998 dt. 25.9.2000  
Ex.W2: Photostat copy of representation dt.11.4.98  
Ex.W3: Photostat copy of order in SLA (Civil) Np.13451/2001  
Ex.W4: Photostat copy of representation dt.3.5.96  
Ex.W5: Photostat copy of provisional receipt from Kapra Municipality dt.13.11.98  
Ex.W6: Photostat copy of representation dt.9.10.98  
Ex.W7: Photostat copy of order in WA No.1602/1999  
Ex.W8: Photostat copy of representation dt.24.10.2005

### Documents marked for the Respondent

Ex.M1: Photostat copy of order in WP No.5592/1991  
Ex.M2: Photostat copy of receipt from Kapra Municipality dt.13.11.98  
Ex.M3: Photostat copy of letter dt.9.1.1999 issued by NFC to Commissioner, Kapra Municipality.  
Ex.M4: Photostat copy of letter dt. 30.9.97 issued by NFC to Sri P. Ramana Reddy, Contractor  
Ex.M5: Photostat copy of order in contempt case No.1903/98  
Ex.M6: Photostat copy of order in WPNo.29210/1998 dt.25.9.2000  
Ex.M7: Photostat copy of order in WA No.1602/1999  
Ex.M8: Photostat copy of receipt from Kapra Municipality dt.1.1.1999.

नई दिल्ली, 17 जनवरी, 2014

**का.आ. 445.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार चीफ एग्जीक्यूटिव नुक्लेअर फ्यूल काम्प्लेक्स डिपार्टमेंट ऑफ एटॉमिक एनर्जी, हैदराबाद के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 32/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-1-2014 को प्राप्त हुआ था।

[सं. एल-42012/03/2014-आई आर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी



New Delhi, the 17th January, 2014

**S.O. 445.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 32/2006) of the Central Government Industrial Tribunal/Labour Court Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Chief Executive, Nuclear Fuel Complex, Department of Atomic Energy, Hyderabad and their workman, which was received by the Central Government on 13-1-2014.

[No. L-42012/03/2014-IR (DU)]

P.K. VENUGOPAL, Section Officer  
**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL CUM LABOUR  
COURT AT HYDERABAD**

**Present :** Smt. M. Vijaya Lakshmi, Presiding Officer

Dated the 30th day of August, 2013

**INDUSTRIAL DISPUTE L.C.No.32/2006**

**Between :**

Smt. D. Sayamma,  
W/o Mattaiah Naik,  
R/o H.No.10-I/148,  
Nehru Nagar Colony, Block-III, H.C.L. X Roads,  
ECIL Post, Ranga Reddy District,  
Hyderabad - 62. .... Petitioner

AND

Chief Executive,  
Nuclear Fuel Complex,  
Department of Atomic Energy,  
Hyderabad - 500 062. ... Respondent

**Appearances:**

For the Petitioner : M/s. G. Ravi Mohan,  
G. Narerssh Kumar, Vikas  
Sharma, K. Bhaskar &  
G. Pavan Kumar,  
Advocates

For the Respondent: Sri K. Suryanarayana,  
Advocate

**AWARD**

This is a petition filed invoking Sec.2A(2) of Industrial Disputes Act, 1947 by the Petitioner who is claiming to be the person who worked as sweeper in the Respondent unit seeking for setting aside the oral termination of services

dated 23.10.1998 by the Respondent consequently to direct the Respondent to reinstate the Petitioner into service with continuity of service, back wages and all other attendant benefits.

**2. The averments made in the petition in brief are as follows:**

Petitioner worked as Sweeper in the Respondent unit w.e.f. 1.5.1992 along with other similarly situated persons. Petitioner was engaged for cleaning, sweeping, dusting, watching of bend dumps. This work is perennial nature. Petitioner was working directly under the control of the Respondent and the salary of the Petitioner is being paid directly by the Respondent. However, Respondent brought non-existing contractor between the Petitioner and the Respondent, to show that, there is no master and servant relationship between them. The Central Government, exercising the power under Sec. 10 of Abolition of Contract Labour Act on the basis of the recommendations and in conciliation with the Central Advisory Board constituted under Sec.10 (1) of the said act issued notification dated 9.12.1976 prohibiting employment of contract labourers in respect of cleaning sweeping, dusting and watching of the building owned by or occupied by the establishment in respect of which the appropriate government under the said act is the Central Government. Petitioner's job is cleaning and sweeping. Once engaging contract labourers for said job is abolished, there is an obligation for the Respondent to consider regularising the Petitioner and similarly placed persons basing on the availability of vacancies. Even as per the mandate of the Apex Court it is the statutory obligation of the Principal Employer to absorb the contract labourer once the contract labour is abolished and to treat them as regular employees. It is the statutory obligation under Sections 11, 19 and 20 of the Factories Act to maintain cleanliness of the area in which the factory is situated. Respondent company is a factory. Even as per the condition contained in format of the license under Contract Labour Regulation and Abolition Act, Petitioner is entitled for regular pay of the minimum wages prescribed by the Government. Initially Petitioner was paid Rs.25/- per day. Subsequently it was enhanced to Rs. 45/- per day. Petitioner worked from May, 1992 to October, 1998 continuously without any break in service. Petitioner along with other similarly situated persons filed WP No.29210 of 1998 before the Hon'ble High Court of A.P. for absorbing as a regular employee and to pay other benefits on par with other employees. During the pendency of the said Writ petition, Petitioner was terminated from the service in the month of October, 1998 and the writ petition was allowed by an order dated 25.9.2000. Against the said order WA No. 1602/1999 was filed by the Respondent before the Division Bench of the Hon'ble High Court of A.P. The said appeal was allowed on 23.2.2001. Against the said order Petitioner filed Special Leave to Appeal (Civil) No.13451/



2001 before the Hon'ble Supreme Court of India and the same was withdrawn with a liberty to raise industrial dispute before the appropriate forum on 9.11.2001. Thus, the Petitioner raised the dispute. The premises of the Respondent including the residential quarters of the officers of the Respondent is in the same campus, i.e., within the premises of the Respondent. Cleaning activities of the Respondent quarters which includes, roads and maintenance of the buildings is to be taken care off by the Respondents only. An officer from the civil department used to take care of the work in respect of cleaning and maintenance of the factory buildings including the residential quarters. No work was entrusted to any outsider at any point of time i.e., contractor. Respondent used to maintain details of casual labourers, who were entrusted with the works of cleaning, gardening, civil works etc., which are perennial in nature. Petitioner was deputed to work as sweeper. Respondent never issued any appointment letter. However, salary was being paid by the Respondent Management on monthly basis. Attendance register and wages register were maintained by the Respondent and the same are in their custody. Respondent used to take the signature of the Petitioner in the "wage register every month while paying salary in cash. There was no contract given to any contractor who is in between Respondent and Petitioner. In view of the notification issued by the Central Government. Respondent should not engage any contract labour. Admittedly, Petitioner is an uneducated woman and she has been exploited by the Respondent by paying less than minimum wages and terminating her services abruptly without any notice consequent to her filing WP before the Hon'ble High Court of A.P. and without following the procedure contemplated under Industrial Disputes Act, 1947 as well as Contract Labour Regulation and Abolition Act. There is violation of the provisions of Sec.25F of Industrial Disputes Act, 1947. Petitioner is the only earning member of her family and consequent to illegal termination of her services it has become difficult to eak out livelihood of her family.

3. Respondent filed his counter with the averments in brief as follows:

Petitioner is supposed to approach Hon'ble Central Administrative Tribunal. Which has the requisite jurisdiction over the service matters as held by the Hon'ble Supreme Court of India in the case of Chandra Kumar Vs. Union of India and in view of the direction given in WP No.5592 of 1991 filed by Sri Kewal Singh and 17 others vide order dated 22.4.1991. Petitioner's claim is barred by limitation as services of the Petitioner said to have been terminated way back in 1995 as the contract entered into with Sri P. Narasimha, the contractor, Respondent No.2 in WP No.29210/1998 expired by 30.6.1995. On this ground also petition is not maintainable. The Nuclear Fuel Complex has constructed manufacturing plants and administrative buildings with separate enclosures and the ingress and

egress of this premises is guarded by Central Industrial Security Force of Ministry of Home Affairs. In so far as housing colony spreading in an area of 260 acres is concerned, watch and ward is taken care of by a security agency. Without any restriction for the entry in the colony by the general public for the purpose of visit the residents of the colony. The over all control including allotment of quarters vests with the Estate Officer, NFC. It is necessary to pay taxes which include service charges in respect of the said colony and it has termed within the jurisdiction of the KAPRA Municipality. Since service charges running into lakhs of rupees have been paid to Kapra Municipality which facilitated the Respondent approaching them for taking up the house keeping jobs in DAE colony. The house keeping works of DAE housing colony is being taken care of by Kapra municipality. The requirement is being met through helpers deployed by such persons. Making such arrangements on the deployment of helpers a running contract for a period of 12 months executing urgent works such as jungle cutting in the sprawling Nuclear Fuel Complex, cleaning of storm water drains and clearance of garbage on roads vide letter dated 30.9.1997. Similar contract was in existence in DAE housing colony where some contract labourers were also engaged. Petitioner is one among the labourers engaged by the contractor who was awarded the work of cleaning of roads and storm water drains in housing colony. Her engagement is not within the knowledge and control of the Respondent at any time. It was outside the scope of the notification dated 9.12.1976 issued by the Central Government. There was no scope for direct payment by the Respondent to the Petitioner at any point of time. Petitioner filed WP No.29210 of 1998 seeking for regularization of her services along with others. By virtue of order dated 22.10.1998 in WPMP 35709 of 1998 Hon'ble High Court of A.P. was pleased to direct that the position shall be maintained till further orders if the Petitioners were in service as on that date. Ultimately by virtue of order dated in WP 29210 of 1998 regularization of the services of the Petitioner among others was ordered. Respondents preferred WA No. 1602/2000 which was allowed vide order dated 22.3.2001. Whereunder, the impugned judgement dated 25.9.2000 in WP No.29210 of 1998 has been set aside. Having maintained silence for a period of more than 5 years Petitioner approached this Tribunal now. It is a belated claim. Statement of the Petitioner that the work done by her was perennial in nature was denied. It was a stop gap arrangement prior to approach the Municipal Authorities of Kapra for taking assistants. Petitioner never worked directly under the control of the Respondent and salary paid to her by the Respondent is outrightly denied. The engagement of the Petitioner by a contractor was outside the scope of notification dated 9.12.1976 issued by the Central Government under Contract Labour (R & A) Act, 1970. Petitioner's employer was not having any contractual obligation with her as on the date of issuance of the notification dated 9.12.1976. As per the

mandate of Hon'ble Apex Court only those contract labourers who were working at the time of issuance of the said notification could be directed to be absorbed in the establishment of the Principal Employer. Petitioner was not a casual labourer on the rolls of the Respondent. Even otherwise as per the mandate of Hon'ble Apex Court casual labourers employed on temporary works are not entitled for regularization for absorption as it amounts to back door entries into service on the basis of completion of 240 days of work and the appointment to the service has to be made in accordance with the statutory rules and guidelines thereunder. Contract labourers are not entitled to the same pay scales as of the regular employees. The residential quarters are not within factory premises. Petitioner never directly engaged by the Respondent and she was never exploited. Petitioner rendered service as a contract labourer with a contractor. She can not claim for regularization of her services. In the writ proceedings for the similar cause of action, litigation was launched seeking for same relief in this proceedings is hit by res judi cata. Petition is liable to be dismissed.

4. To substantiate the contentions of the Petitioner WWI was examined and exhibits W1 to W8 are marked. While WWI evidence was in progress and by virtue of the orders dated 17.3.2009, this matter i.e. LC No.32/2006 along with other L.C. Nos. taking from L.C. No. 29 to 40/2006 are clubbed together in i.e. 28/2006 in pursuance of the memo filed by the Petitioner and it has been ordered that evidence is to be adduced in first case i.e., LC 28/2006. Accordingly in respect of all these cases i.e., LC 28 to 40 of 2006, Smt. T. Saradha, WWI in L.C. 28/2006 alone has been cross examined on behalf of respondents, though separate chief examination affidavits of WWI have been filed in all these cases. Further more, Respondent's evidence has been adduced in all these cases separately by examining MWI and Management marked Ex.M1 to M8 in each case and arguments are also advanced in all these cases and Respondent has filed his written arguments in all these cases separately. In the given circumstances and for the sake of effective disposal of all these cases awards are being passed in all these cases separately and individually.

5. Heard the arguments of either party and written arguments of either party are also filed and they are considered.

6. The points that arise for determination are:

1. Whether this dispute is not maintainable before this tribunal for want of jurisdiction?
2. Whether this dispute is barred by limitation?
3. Whether the proceedings in writ petition No. 29210 of 1998 operate as re judi cata?
4. Whether there is no relationship of workman and Management between the Petitioner and Respondent?

5. Whether there is termination of the service of the Petitioner by the Respondent through oral termination order dated 23.10.1998? If so, whether the said order is liable to be set aside?

6. To what relief Petitioner is entitled?

#### 7. Point No. 1 :

There is no dispute as to the fact that Petitioner is a workman and Respondent is an industry. But, Respondent is contending that this tribunal can not entertain this case for the reason, that as held in the case of Sri Chandra Kumar vs. Union of India (AIR 1997 SC 1125) Petitioner is supposed to have his legal recourse from the Central Administrative Tribunal. This contention can not be accepted as a correct contention. It is undoubtedly an industrial dispute and the Respondent is admittedly a Central Government organisation. This forum is Central Government Industrial Tribunal cum Labour Court whose function is to decide the industrial disputes arising from the industries which are Central Government undertakings. All the industrial disputes which arose within the jurisdiction of this tribunal and which concern with the Central Government organisations Central Government undertakings, are to be decided by this forum only as per the powers conferred on this tribunal. As to the Central Administrative Tribunal is concerned, all the service and administration related disputes pertaining to the officers and employees of all the Central Government offices, organisations and undertakings are to be dealt with by the said forum. Since the present dispute is an industrial dispute raised under Sec. 2A(2) of Industrial Disputes Act, 1947, this tribunal got every jurisdiction to entertain this dispute.

This point is answered accordingly.

#### 8. Point No. 2:

It is the contention of the Respondent that present dispute is barred by limitation for the reason that Petitioner filed this petition five years after the Hon'ble High Court of A.P. decided WA No.1602/2000 in WP No.29210 /1998 by virtue of judgement dated 22.3.2001. In this regard, it can clearly be seen that there is no consonance between the writ proceedings and filing of this industrial dispute before this court. Further more, as on the date of filing of the present petition, no limitation was prescribed for preferring industrial disputes in the Industrial Disputes Act, 1947. Only recently i.e., in the year 2010 limitation has been prescribed for preferring industrial disputes invoking Sec.2A(2) of Industrial Disputes Act, 1947 by enacting Sec.2A(3) of the said act. Thus, as on the relevant date, there was no prescription of period of limitation for preferring industrial disputes. It is not for the courts to prescribe any period of limitation. When the Act is silent as to the question of limitation, the courts are bound to entertain the cases, without looking into the belatedness or otherwise in filing the same, as it is the duty of the courts to interpret and implement the law enacted by the

parliament only, but not to substitute or incorporate any new law. In the given circumstances, it is to be held that this petition is not barred by limitation.

This point is answered accordingly.

### 9. Point No. 3:

The writs filed invoking the extraordinary jurisdiction of the Constitutional Courts provided under Article 226 of Constitution of India will never act as *res judicata* for the cases filed before the civil courts and tribunals which are clothed with ordinary jurisdiction by the various enactments. This tribunal is clothed with the ordinary jurisdiction to entertain industrial disputes. Whereas while preferring writs before Hon'ble High Court of A.P. the Petitioner has invoked extra ordinary jurisdiction provided under Article 226 of Constitution of India. Further more, Petitioner and others have withdrawn the special leave petition filed by them challenging the judgement dated 22.3.2001 rendered in the rendered by Hon'ble High Court of A.P. in WA No. 1602/2000 only to raise an industrial dispute and said withdrawal has been accepted by Hon'ble Supreme Court of India, as can be seen in Ex.W3 the order rendered in Special Leave to Appeal (Civil) No. 13451/2001.

10. Further more, the writ proceedings were launched by the Petitioner and other similarly placed persons seeking for regularisation of their services with the Respondent. Whereas, the present industrial dispute is raised by the Petitioner, consequent to termination of her services while the writ appeal was pending, seeking for setting aside the oral termination order dated 23.10.1998 of the Respondent, whereunder Petitioner's services were terminated consequently directing the Respondent to reinstate the Petitioner into service with attendant benefits. Therefore, cause of action for filing the writ proceeding and for raising the present industrial dispute and also nature of these two proceedings are totally different and distinct.

11. In the given circumstances, it can safely be held that the proceedings of WP No.2921 0/1998 will not act as *res judi cata* for the present proceedings.

This point is answered accordingly.

### 12. Point No.4:

Admittedly, Petitioner has worked with the Respondent organisation. It can be said so since, in their counter Respondent has not disputed regarding the fact that Petitioner has worked with them.

13. It is the contention of the Petitioner that she has been engaged by the Respondent for cleaning, sweeping, dusting, watching bend dumps, the work, nature of which is perennial and that the Petitioner was working directly under the control of the Respondent receiving salary directly from the Respondent but however, Respondent brought non-existing contractor between the Petitioner and Respondent to show that there is no master and servant relationship between them.

14. Whereas, Respondent is contending that house keeping works in DAE housing colony, in which the staff of the Respondent unit are housed, is being taken care of by CAPRA municipality, whereas requirement of plant of the Respondent is being met through helpers(COS) deployed for the said purpose, however, prior to making this arrangements through CAPRA municipality and / or deployment of helpers(COS) a running contract for a period of 12 months was awarded for executing urgent works such as, jungle cutting in the NFC works as well as DAE Housing colony, where some contract labourers were engaged and that Petitioner is one among the labourers engaged by the contractor who was awarded with the work of cleaning of roads and storm water drains in housing colony.

15. From the above contention and counter contention of the Petitioner and Respondent, what one can gather is, that admittedly Petitioner has been working for the Respondent unit, and she was awarded with the work of cleaning of the premises, but it is the contention of the Respondent, contrary to the contentions of the Petitioner, that Petitioner has been a contract labourer engaged by the contractor to whom the cleaning work was entrusted by the Respondent but not a person directly engaged by the Respondent.

16. When once Respondent accepted the fact that Petitioner has worked with him but claimed that there is an intermediary between them i.e., a contractor, it is for the Respondent to establish before the court that there has been such contractor and the said contractor engaged the Petitioner for cleaning work entrusted to her by the Respondent. Further more, it is to be verified by the court, if it is established before the court that there has been such a contractor, whether the principal employer i.e., the Respondent was exercising control over the functioning of the Petitioner or whether through the contractor only the work was being done. Who is exercising control over the conditions of the service of the Petitioner is a crucial aspect to decide whether there is master and servant relationship between the principal employer and the workman or whether the alleged contractor himself remained as a master for the workman and other such relevant aspects. In this regard, it is well established legal principle that "the Industrial Tribunal/court will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere rule/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer." This is the legal principle laid down by the Hon'ble Supreme Court of India in the case of Steel Authority of India and ors. Vs. National Union Waterfront Workers and Others



[(2001) 7 SCC page I], which is relied upon by Learned Counsel for the Respondent himself.

17. All the above referred crucial aspects in this case can be gathered from the relevant record maintained by the Respondent in connection with the alleged contract entrusted to the contractor regarding the way in which the work was extracted from the Petitioner and other workers and also the mode of payment of wages to the Petitioner and other workmen and other related aspects. It is the burden of the Respondent to place all the relevant record before this tribunal. But the only record produced by the Respondent regarding the alleged contract is Ex.M4, the letter dated 30.9.97 said to have been issued by the Respondent to one Sri P. Ramana Reddy a contractor. There is no record to show that Respondent called for tenders for given contract work and selected any persons as contractors through any selection process. While she was under cross examination MW1 had admitted that they have not filed any document to show that contractor was engaged or agreement was entered between contractor and Management.

18. Further, in Ex.M4 it is averred that “A daily report indicating the details of labourers and vehicle engaged on the work for each day shall be submitted to the Engineer-in-charge, before 10.00 AM on every working day. Payment of wages to contract labourers shall be as per regulations laid down in CPWD contractors labour regulation to be applicable to Nuclear Fuel Complex. Intimation regarding wage period, date of payment, place and time of disbursement shall be given to the Engineer-in-charge within 2 (two) weeks from the date of issue of this order”. If the work was done in furtherance of Ex.M4 order, in every likelihood the daily report indicating details of labourers and vehicles engaged for the work, would have been submitted by the contractor to the Engineer-in-charge on every working day and further intimation regarding the wage period date of payment, place and time of disbursement of wages also would have been given to the Engineer-in-charge and such documents will be available with the Respondent. But no such documents are placed before the court which indicates that there are no such documents and therefore Ex.M4 has never been acted upon.

19. In the absence of proper proof of the fact that Petitioner has been a labourer worked under a contractor but not a direct employee of the Respondent, it is to be taken that she is the direct employee of the Respondent for the reason that it is an admitted fact that Petitioner worked for the Respondent as a sweeper. It can be taken that there is no proper proof of the contentions of the Respondent that Petitioner has been working under a contractor, for the above referred reason that Respondent failed to produce that all the relevant documents which will certainly will be in their custody, if actually Petitioner has been working under a contractor to whom the Respondent entrusted the

cleaning of the premises as a contract work. Therefore, it can safely be held that Respondent failed to establish that Petitioner has been working under a contractor who has been entrusted with the job of cleaning of their premises but not their direct employee.

20. In view of the foregone discussion it can safely be held that there is relationship of workman and Management between the Petitioner and the Respondent which indicates that there is master and servant relationship between them.

This point is answered accordingly.

## **21. Point No. 5**

As can be gathered from the line of the defence taken in this case by the Respondent and the arguments built up and advanced for them, what one can see is that they are meeting the claim of the Petitioner, as if the Petitioner is seeking for regularization of services. But the fact remains that Petitioner is seeking for setting aside the order under which Petitioner's services were terminated and for reinstatement into service and other consequential reliefs. In the writ proceedings Petitioner sought for regularization of service but while writ appeal was pending disposal, as the Petitioner's services were terminated, this industrial dispute is raised seeking for setting aside the said termination order and consequential reinstatement of the Petitioner into service and for grant of other attendant benefits. Ignoring these aspects Respondent is advancing their arguments regarding the claim of the Petitioner in the writ proceedings for regularization of services. The said arguments are to be taken as not helpful for the proceedings of this case. The various legal precedents cited for the Respondent are also not helpful for furtherance of this case as they are all in respect of the regularization of the services of the contract employees. In this case, the relief sought for is not for regularization of service but it is for reinstatement into service. But in this case also the question whether Petitioner has been a contract labourer or other wise is to be decided and it has been decided while deciding Point No.4 alone.

22. Evidently, Respondent ceased to take services of the Petitioner Since 23.10.1998. In their counter the Respondent has chosen to plead that the contractor has terminated the services of the Petitioner in the year 1998 but as discussed above while deciding point No.4 Respondent failed to establish that there has been a contractor as an intermediary between them and the Petitioner. Thus, it can safely be inferred that Respondent is the organization which terminated the services of the Petitioner.

23. It is claim of the Petitioner that said termination is by way of an oral order and therefore, it is not possible for the Petitioner to produce any termination order. But the fact remains that even as per contentions of the Respondent

they ceased to take the services of the Petitioner since the year 1998. Therefore, it can reasonably be accepted that there has been oral termination of the Petitioner with effect from 23.10.1998.

24. It is well established principle of law that every termination spells retrenchment. With this regard there is no dispute.

25. Sec.25F of the Industrial Disputes Act, 1947 deals with conditions precedent to retrenchment of workman. Sec.25 F reads as follows:-

“25-F: Conditions precedent to retrenchment of workmen:- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) The workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice.
- (b) The workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and
- (c) Notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette].”

26. As can be gathered from the facts on record, Petitioner worked for one year continuously even as per the contentions of the Respondent, leaving alone the contentions of the Petitioner that she has been in continuous service with the Respondent since years together which has not been disproved by producing the record maintained by the Respondent regarding the service of the Petitioner with the Respondent. Therefore, it can safely be held that Petitioner comes under the purview of the workman mentioned in Sec.25F by working with the Respondent for not less than one year. As per Sec. 25F such a workman can not be retrenched, until he has been given one month's notice in writing indicating the reasons for retrenchment and only after expiry of the period of notice or otherwise by making payment of wages in lieu of such notice for the period of notice. Further more, the workman has to be paid retrenchment compensation as mentioned in Sec. 25F (b) and there shall be compliance of Sec. 25F (c).

27. Unless there is compliance of all the above mentioned mandatory pre requisites the retrenchment of the workman is to be held as null and void, illegal and inoperative, as per the well established legal principles laid down by Hon'ble the Apex Court. In the case of Devinder Singh Vs. Municipal Council, Sanaur, [(2011) 6 SCC page 584] and in the case of Anup Sharma Vs. Public Health Division [(2010) 5 SCC 497] Hon'ble Supreme Court of India considered the effect of violation of Sec.25F and held that termination of service of a workman without complying with the mandatory provisions contained under Sec.25F (A) and (B) should ordinarily result in his reinstatement.

28. In the present case, evidently there is no compliance of the mandatory pre- requisites contemplated under Sec. 25F (a) and (b) of Industrial Disputes Act, 1947. Therefore, the impugned termination order is bad and is liable to be set aside and Petitioner is entitled for reinstatement into service.

This point is answered accordingly.

#### **29. Point No.6:**

In view of the findings given in Point No. 5 above, the impugned oral termination order dated 23.10.1998 is liable to be set aside. Consequently Petitioner is entitled for reinstatement into service as Sweeper with continuity of service. Considering the way in which the Petitioner's services were terminated while the writ proceedings launched by the Petitioner seeking for regularization is pending, it can safely be held that Petitioner is entitled for all back wages, and all other attendant benefits.

This point is answered accordingly.

#### **30. Result:-**

In the result, petition is allowed. The oral order dated 23.10.1998 of the Respondent terminating the services of the Petitioner is hereby set aside. Petitioner shall be reinstated into service forthwith. Respondent shall pay back wages to the Petitioner for the period from 23.10.1998 the date of termination of her services till the date of the Petitioner's reinstatement into service. Petitioner is entitled for all other consequential benefits as well.

Award passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant corrected by me on this the 30th day of August, 2013.

M. VIJAYA LAKSHMI, Presiding Officer

#### **Appendix of evidence**

|  |  |
|--|--|
| Witnesses examined<br>for the Petitioner | Witnesses examined for the<br>Respondent |
| WW1: Smt. D. Sayamma                     | MW1 :Smt. A. Rama Devi                   |



**Documents marked for the Petitioner**

- Ex.W1: Photostat copy of order in WP No. 29210/1998 dt. 25.9.2000
- Ex.W2: Photostat copy of representation dt.11.4.98
- Ex.W3: Photostat copy of order in SLA (Civil) Np.13451/2001
- Ex.W4: Photostat copy of representation dt.3.5.96
- Ex.W5: Photostat copy of provisional receipt from Kapra Municipality dt. 13.11.98
- Ex.W6: Photostat copy of representation dt.9.10.98
- Ex.W7: Photostat copy of order in WA No.1602/1999
- Ex.W8: Photostat copy of representation dt. 24.10.2005

**Documents marked for the Respondent**

- Ex.M1: Photostat copy of order in WP No. 5592/1991
- Ex.M2: Photostat copy of receipt from Kapra Municipality dt.13.11.98
- Ex.M3: Photostat copy of letter dt.9.1.1999 issued by NFC to Commissioner, Kapra Municipality.
- Ex.M4: Photostat copy of letter dt. 30.9.97 issued by NFC to Sri P. Ramana Reddy, Contractor
- Ex.M5: Photostat copy of order in contempt case No.1903/98
- Ex.M6: Photostat copy of order in WP No. 29210/1998 dt. 25.9.2000
- Ex.M7: Photostat copy of order in W A No. 1602/1999
- Ex.M8: Photostat copy of receipt from Kapra Municipality dt. 1.1.1999.

नई दिल्ली, 17 जनवरी, 2014

**का.आ. 446.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार चीफ एग्जीक्यूटिव नुक्लेअर फ्यूल काम्प्लेक्स डिपार्टमेंट ऑफ एटॉमिक एनर्जी हैदराबाद के प्रबंधन के संबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 34/2006) प्रकाशित करती है, जो केन्द्रीय सरकार को 13-1-2014 को प्राप्त हुआ था।

[सं. एल-42012/03/2014-आई आर (डीयू)]  
पी.के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 17th January, 2014

**S.O. 446.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 34/2006) of the Central Government Industrial Tribunal/Labour Court Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Chief Executive, Nuclear Fuel Complex, Department of Atomic Energy, Hyderabad and their workman, which was received by the Central Government on 13-1-2014.

[No. L-42012/03/2014-IR (DU)]

P.K. VENUGOPAL, Section Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT  
HYDERABAD**

**Present:** - Smt. M. Vijaya Lakshmi, Presiding Officer

Dated the 30th day of August, 2013

**INDUSTRIAL DISPUTE No. L.C. 34/2006****Between:**

Smt. A. Susheela,  
W/o A. Mallaiah,  
R/o H.No.3-5-24/R/151,  
Rajiv Gandhi Nagar, Kapra Municipality,  
Ranga Reddy District.  
Hyderabad. ....Petitioner

AND

Chief Executive,  
Nuclear Fuel Complex,  
Department of Atomic Energy,  
Hyderabad – 500 062. ....Respondent

**Appearances:**

For the Petitioner : M/s. G. Ravi Mohan, G. Narerish Kumar, Vikas Sharma, K. Bhaskar & G. Pavan Kumar, Advocates

For the Respondent: Sri K. Suryanarayana, Advocate

**AWARD**

This is a petition filed invoking Sec. 2A(2) of Industrial Disputes Act, 1947 by the Petitioner who is claiming to be the person who worked as sweeper in the Respondent unit seeking for setting aside the oral termination of services dated 23.10.1998 by the Respondent consequently to direct the Respondent to reinstate the Petitioner into service with continuity of service, back wages and all other attendant benefits.

2. The averments made in the petition in brief are as follows:

Petitioner worked as Sweeper in the Respondent unit w.e.f. 1.5.1992 along with other similarly situated persons. Petitioner was engaged for cleaning, sweeping, dusting, watching of bend dumps. This work is perennial nature. Petitioner was working directly under the control of the Respondent and the salary of the Petitioner is being paid directly by the Respondent. However, Respondent brought non-existing contractor between the Petitioner and the Respondent, to show that there is no master and servant relationship between them. The Central Government, exercising the power under Sec.10 of Abolition of Contract Labour Act on the basis of the recommendations and in conciliation with the Central Advisory Board constituted under Sec.10 (1) of the said act issued notification dated 9.12.1976 prohibiting employment of contract labourers in respect of cleaning sweeping, dusting and watching of the building owned by or occupied by the establishment in respect of which the appropriate government under the said act is the Central Government. Petitioner's job is cleaning and sweeping. Once engaging contract labourers for said job is abolished, there is an obligation for the Respondent to consider regularising the Petitioner and similarly placed persons basing on the availability of vacancies. Even as per the mandate of the Apex Court it is the statutory obligation of the Principal Employer to absorb the contract labourer once the contract labour is abolished and to treat them as regular employees. It is the statutory obligation under Sections 11, 19 and 20 of the Factories Act to maintain cleanliness of the area in which the factory is situated. Respondent company is a factory. Even as per the condition contained in format of the license under Contract Labour Regulation and Abolition Act, Petitioner is entitled for regular pay of the minimum wages prescribed by the Government. Initially Petitioner was paid Rs. 25 per day. Subsequently it was enhanced to Rs. 45 per day. Petitioner worked from May, 1992 to October, 1998 continuously without any break in service. Petitioner along with other similarly situated persons filed WP No. 29210 of 1998 before the Hon'ble High Court of A.P. for absorbing as a regular employee and to pay other benefits on par with other employees. During the pendency of the said Writ petition, Petitioner was terminated from the service in the month of October 1998 and the writ petition was allowed by an order dated 25.9.2000. Against the said order WA No. 1602/1999 was filed by the Respondent before the Division Bench of the Hon'ble High Court of A.P. The said appeal was allowed on 23.2.2001. Against the said order Petitioner filed Special Leave to Appeal (Civil) No.13451/2001 before the Hon'ble Supreme Court of India and the same was withdrawn with a liberty to raise industrial dispute before the appropriate forum on 9.11.2001. Thus,

the Petitioner raised the dispute. The premises of the Respondent including the residential quarters of the officers of the Respondent is in the same campus, i.e., within the premises of the Respondent. Cleaning activities of the Respondent quarters which includes, roads and maintenance of the buildings is to be taken care off by the Respondents only. An officer from the civil department used to take care of the work in respect of cleaning and maintenance of the factory buildings including the residential quarters. No work was entrusted to any outsider at any point of time i.e., contractor. Respondent used to maintain details of casual labourers, who were entrusted with the works of cleaning, gardening, civil works etc., which are perennial in nature. Petitioner was deputed to work as sweeper. Respondent never issued any appointment letter. However, salary was being paid by the Respondent Management on monthly basis. Attendance register and wages register were maintained by the Respondent and the same are in their custody. Respondent used to take the signature of the Petitioner in the wage register every month while paying salary in cash. There was no contract given to any contractor who is in between Respondent and Petitioner. In view of the notification issued by the Central Government. Respondent should not engage any contract labour. Admittedly, Petitioner is an uneducated woman and she has been exploited by the Respondent by paying less than minimum wages and terminating her services abruptly without any notice consequent to her filing WP before the Hon'ble High Court of A.P. and without following the procedure contemplated under Industrial Disputes Act, 1947 as well as Contract Labour Regulation and Abolition Act. There is violation of the provisions of Sec.25F of Industrial Disputes Act, 1947. Petitioner is the only earning member of her family and consequent to illegal termination of her services it has become difficult to eak out livelihood of her family.

3. Respondent filed his counter with the averments in brief as follows:

Petitioner is supposed to approach Hon'ble Central Administrative Tribunal. Which has the requisite jurisdiction over the service matters as held by the Hon'ble Supreme Court of India in the case of Chandra Kumar Vs. Union of India and in view of the direction given in WP No.5592 of 1991 filed by Sri Kewal Singh and 17 others vide order dated 22.4.1991. Petitioner's claim is barred by limitation as services of the Petitioner said to have been terminated way back in 1995 as the contract entered into with Sri P. Narasimha, the contractor, Respondent No.2 in WP No.29210/1998 expired by 30.6.1995. On this ground also petition is not maintainable. The Nuclear Fuel Complex has constructed manufacturing plants and administrative buildings with separate enclosures and the ingress and

egress of this premises is guarded by Central Industrial Security Force of Ministry of Home Affairs. In so far as housing colony spreading in an area of 260 acres is concerned, watch and ward is taken care of by a security agency. Without any restriction for the entry in the colony by the general public for the purpose of visit the residents of the colony. The over all control including allotment of quarters vests with the Estate Officer, NFC. It is necessary to pay taxes which include service charges in respect of the said colony and it has termed within the jurisdiction of the KAPRA municipality. Since service charges running into lakhs of rupees have been paid to Kapra Municipality which facilitated the Respondent approaching them for taking up the house keeping jobs in DAE colony. The house keeping works of DAE housing colony is being taken care of by Kapra municipality. The requirement is being met through helpers deployed by such persons. Making such arrangements on the deployment of helpers a running contract for a period of 12 months executing urgent works such as jungle cutting in the sprawling Nuclear Fuel Complex, cleaning of storm water drains and clearance of garbage on roads vide letter dated 30.9.1997. Similar contract was in existence in DAE housing colony where some contract labourers were also engaged. Petitioner is one among the labourers engaged by the contractor who was awarded the work of cleaning of roads and storm water drains in housing colony. Her engagement is not within the knowledge and control of the Respondent at any time. It was outside the scope of the notification dated 9.12.1976 issued by the Central Government. There was no scope for direct payment by the Respondent to the Petitioner at any point of time. Petitioner filed WP No.29210 of 1998 seeking for regularization of her services along with others. By virtue of order dated 22.10.1998 in WPMP 35709 of 1998 Hon'ble High Court of A.P. was pleased to direct that the position shall be maintained till further orders if the Petitioners were in service as on that date. Ultimately by virtue of order dated in WP 29210 of 1998 regularization of the services of the Petitioner among others was ordered. Respondents preferred WA No.1602/2000 which was allowed vide order dated 22.3.2001. Whereunder, the impugned judgement dated 25.9.2000 in WP No.29210 of 1998 has been set aside. Having maintained silence for a period of more than 5 years Petitioner approached this Tribunal now. It is a belated claim. Statement of the Petitioner that the work done by her was perennial in nature was denied. It was a stop gap arrangement prior to approach the Municipal Authorities of Kapra for taking assistants. Petitioner never worked directly under the control of the Respondent and salary paid to her by the Respondent is outrightly denied. The engagement of the Petitioner by a contractor was outside the scope of notification dated 9.12.1976 issued by the Central Government under Contract Labour (R & A) Act, 1970. Petitioner's employer was not having any contractual obligation with her as on the date

of issuance of the notification dated 9.12.1976. As per the mandate of Hon'ble Apex Court only those contract labourers who were working at the time of issuance of the said notification could be directed to be absorbed in the establishment of the Principal Employer. Petitioner was not a casual labourer on the rolls of the Respondent. Even otherwise as per the mandate of Hon'ble Apex Court casual labourers employed on temporary works are not entitled for regularization for absorption as it amounts to back door entries into service on the basis of completion of 240 days of work and the appointment to the service has to be made in accordance with the statutory rules and guidelines thereunder. Contract labourers are not entitled to the same pay scales as of the regular employees. The residential quarters are not within factory premises. Petitioner never directly engaged by the Respondent and she was never exploited. Petitioner rendered service as a contract labourer with a contractor. She can not claim for regularization of her services. In the writ proceedings for the similar cause of action, litigation was launched seeking for same relief in this proceedings is hit by res judi cata. Petition is liable to be dismissed.

4. To substantiate the contentions of the Petitioner WW1 was examined and exhibits W1 to W8 are marked. While WW1 evidence was in progress and by virtue of the orders dated 17.3.2009, this matter i.e.LC No.34/2006 along with other L.C. Nos. taking from L.C. No. 29 to 40/2006 are clubbed together in L.C. 28/2006 in pursuance of the memo filed by the Petitioner and it has been ordered that evidence is to be adduced in first case i.e., LC 28/2006. Accordingly in respect of all these cases i.e., LC 28 to 40 of 2006, Smt. T. Saradha, WW1 in L.C. 28/2006 alone has been cross examined on behalf of respondents, though separate chief examination affidavits of WW1 have been filed in all these cases. Further more, Respondent's evidence has been adduced in all these cases separately by examining MW1 and Management marked Ex.M1 to M8 in each case and arguments are also advanced in all these cases and Respondent has filed his written arguments in all these cases separately. In the given circumstances and for the sake of effective disposal of all these cases awards are being passed in all these cases separately and individually.

5. Heard the arguments of either party and written arguments of either party are also filed and they are considered.

6. The points that arise for determination are:

1. Whether this dispute is not maintainable before this tribunal for want of jurisdiction?
2. Whether this dispute is barred by limitation?
3. Whether the proceedings in writ petition No. 29210 of 1998 operate as res judicata?

4. Whether there is no relationship of workman and Management between the Petitioner and Respondent?
5. Whether there is termination of the service of the Petitioner by the Respondent through oral termination order dated 23.10.1998? If so, whether the said order is liable to be set aside?
6. To what relief Petitioner is entitled?

**7. Point No.1:**

There is no dispute as to the fact that Petitioner is a workman and Respondent is an industry. But, Respondent is contending that this tribunal can not entertain this case for the reason, that as held in the case of Sri Chandra Kumar vs. Union of India (AIR 1997 SC 1125) Petitioner is supposed to have his legal recourse from the Central Administrative Tribunal. This contention can not be accepted as a correct contention. It is undoubtedly an industrial dispute and the Respondent is admittedly a Central Government organisation. This forum is Central Government Industrial Tribunal -cum -Labour Court whose function is to decide the industrial disputes arising from the industries which are Central Government undertakings. All the industrial disputes which arose within the jurisdiction of this tribunal and which concern with the Central Government organisations Central Government undertakings, are to be decided by this forum only as per the powers conferred on this tribunal. As to the Central Administrative Tribunal is concerned, all the service and administration related disputes pertaining to the officers and employees of all the Central Government offices, organisations and undertakings are to be dealt with by the said forum. Since the present dispute is an industrial dispute raised under Sec.2A(2) of Industrial Disputes Act, 1947, this tribunal got every jurisdiction to entertain this dispute.

This point is answered accordingly.

**8. Point No.2:**

It is the contention of the Respondent that present dispute is barred by limitation for the reason that Petitioner filed this petition five years after the Hon'ble High Court of A.P. decided WA No.1602/2000 in WP No.29210/1998 by virtue of judgement dated 22.3.2001. In this regard, it can clearly be seen that there is no consonance between the writ proceedings and filing of this industrial dispute before this court. Further more, as on the date of filing of the present petition, no limitation was prescribed for preferring industrial disputes in the Industrial Disputes Act, 1947. Only recently i.e., in the year 2010 limitation has been

prescribed for preferring industrial disputes invoking Sec.2A(2) of Industrial Disputes Act, 1947 by enacting Sec.2A(3) of the said act. Thus, as on the relevant date, there was no prescription of period of limitation for preferring industrial disputes. It is not for the courts to prescribe any period of limitation. When the Act is silent as to the question of limitation, the courts are bound to entertain the cases, without looking into the belatedness or otherwise in filing the same, as it is the duty of the courts to interpret and implement the law enacted by the parliament only, but not to substitute or incorporate any new law. In the given circumstances, it is to be held that this petition is not barred by limitation.

This point is answered accordingly.

**9. Point No.3:**

The writs filed invoking the extraordinary jurisdiction of the Constitutional Courts provided under Article 226 of Constitution of India will never act as res judicata for the cases filed before the civil courts and tribunals which are clothed with ordinary jurisdiction by the various enactments. This tribunal is clothed with the ordinary jurisdiction to entertain industrial disputes. Whereas while preferring writs before Hon'ble High Court of A.P. the Petitioner has invoked extra ordinary jurisdiction provided under Article 226 of Constitution of India. Further more, Petitioner and others have withdrawn the special leave petition filed by them challenging the judgement dated 22.3.2001 rendered in the rendered by Hon'ble High Court of A.P. in WA No.1602/2000 only to raise an industrial dispute and said withdrawal has been accepted by Hon'ble Supreme Court of India, as can be seen in Ex.W3 the order rendered in Special Leave to Appeal (Civil) No.13451/2001.

10. Further more, the writ proceedings were launched by the Petitioner and other similarly placed persons seeking for regularisation of their services with the Respondent. Whereas, the present industrial dispute is raised by the Petitioner, consequent to termination of her services while the writ appeal was pending, seeking for setting aside the oral termination order dated 23.10.1998 of the Respondent, whereunder Petitioner's services were terminated consequently directing the Respondent to reinstate the Petitioner into service with attendant benefits. Therefore, cause of action for filing the writ proceeding and for raising the present industrial dispute and also nature of these two proceedings are totally different and distinct.

11. In the given circumstances, it can safely be held that the proceedings of WP No.29210/1998 will not act as res judi cata for the present proceedings.

This point is answered accordingly.



**12. Point No.4:**

Admittedly, Petitioner has worked with the Respondent organisation. It can be said so since, in their counter Respondent has not disputed regarding the fact that Petitioner has worked with them.

13. It is the contention of the Petitioner that she has been engaged by the Respondent for cleaning, sweeping, dusting, watching bend dumps, the work, nature of which is perennial and that the Petitioner was working directly under the control of the Respondent receiving salary directly from the Respondent but however, Respondent brought non-existing contractor between the Petitioner and Respondent to show that there is no master and servant relationship between them.

14. Whereas, Respondent is contending that house keeping works in DAE housing colony, in which the staff of the Respondent unit are housed, is being taken care of by CAPRA municipality, whereas requirement of plant of the Respondent is being met through helpers(COS) deployed for the said purpose, however, prior to making this arrangements through CAPRA municipality and / or deployment of helpers(COS) a running contract for a period of 12 months was awarded for executing urgent works such as, jungle cutting in the NFC works as well as DAE Housing colony, where some contract labourers were engaged and that Petitioner is one among the labourers engaged by the contractor who was awarded with the work of cleaning of roads and storm water drains in housing colony.

15. From the above contention and counter contention of the Petitioner and Respondent, what one can gather is, that admittedly Petitioner has been working for the Respondent unit, and she was awarded with the work of cleaning of the premises, but it is the contention of the Respondent, contrary to the contentions of the Petitioner, that Petitioner has been a contract labourer engaged by the contractor to whom the cleaning work was entrusted by the Respondent but not a person directly engaged by the Respondent.

16. When once Respondent accepted the fact that Petitioner has worked with him but claimed that there is an intermediary between them i.e., a contractor, it is for the Respondent to establish before the court that there has been such contractor and the said contractor engaged the Petitioner for cleaning work entrusted to her by the Respondent. Further more, it is to be verified by the court, if it is established before the court that there has been such a contractor, whether the principal employer i.e., the Respondent was exercising control over the functioning of the Petitioner or whether through the contractor only the work was being done. Who is exercising control over the conditions of the service of the Petitioner is a crucial aspect to decide whether there is master and servant relationship between the principal employer and the

workman or whether the alleged contractor himself remained as a master for the workman and other such relevant aspects. In this regard, it is well established legal principle that "the Industrial Tribunal/court will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere rule/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer." This is the legal principle laid down by the Hon'ble Supreme Court of India in the case of Steel Authority of India and ors. Vs. National Union Waterfront Workers and Others {(2001) 7 SCC page 1}, which is relied upon by Learned Counsel for the Respondent himself.

17. All the above referred crucial aspects in this case can be gathered from the relevant record maintained by the Respondent in connection with the alleged contract entrusted to the contractor regarding the way in which the work was extracted from the Petitioner and other workers and also the mode of payment of wages to the Petitioner and other workmen and other related aspects. It is the burden of the Respondent to place all the relevant record before this tribunal. But the only record produced by the Respondent regarding the alleged contract is Ex.M4, the letter dated 30.9.97 said to have been issued by the Respondent to one Sri P. Ramana Reddy a contractor. There is no record to show that Respondent called for tenders for given contract work and selected any persons as contractors through any selection process. While she was under cross examination MW1 had admitted that they have not filed any document to show that contractor was engaged or agreement was entered between contractor and Management.

18. Further, in Ex.M4 it is averred that "A daily report indicating the details of labourers and vehicle engaged on the work for each day shall be submitted to the Engineer-in-charge, before 10.00 AM on every working day. Payment of wages to contract labourers shall be as per regulations laid down in CPWD contractors labour regulation to be applicable to Nuclear Fuel Complex. Intimation regarding wage period, date of payment, place and time of disbursement shall be given to the Engineer-in-charge within 2 (two) weeks from the date of issue of this order". If the work was done in furtherance of Ex.M4 order, in every likelihood the daily report indicating details of labourers and vehicles engaged for the work, would have been submitted by the contractor to the Engineer-in-charge on every working day and further intimation regarding the wage period date of payment, place and time of disbursement of wages also would have been given to the Engineer-in-charge and such documents will be available



with the Respondent. But no such documents are placed before the court which indicates that there are no such documents and therefore Ex.M4 has never been acted upon.

19. In the absence of proper proof of the fact that Petitioner has been a labourer worked under a contractor but not a direct employee of the Respondent, it is to be taken that she is the direct employee of the Respondent for the reason that it is an admitted fact that Petitioner worked for the Respondent as a sweeper. It can be taken that there is no proper proof of the contentions of the Respondent that Petitioner has been working under a contractor, for the above referred reason that Respondent failed to produce that all the relevant documents which will certainly will be in their custody, if actually Petitioner has been working under a contractor to whom the Respondent entrusted the cleaning of the premises as a contract work. Therefore, it can safely be held that Respondent failed to establish that Petitioner has been working under a contractor who has been entrusted with the job of cleaning of their premises but not their direct employee.

20. In view of the foregone discussion it can safely be held that there is relationship of workman and Management between the Petitioner and the Respondent which indicates that there is master and servant relationship between them.

This point is answered accordingly.

#### **21. Point No.5:**

As can be gathered from the line of the defence taken in this case by the Respondent and the arguments built up and advanced for them, what one can see is that they are meeting the claim of the Petitioner, as if the Petitioner is seeking for regularization of services. But the fact remains that Petitioner is seeking for setting aside the order under which Petitioner's services were terminated and for reinstatement into service and other consequential reliefs. In the writ proceedings Petitioner sought for regularization of service but while writ appeal was pending disposal, as the Petitioner's services were terminated, this industrial dispute is raised seeking for setting aside the said termination order and consequential reinstatement of the Petitioner into service and for grant of other attendant benefits. Ignoring these aspects Respondent is advancing their arguments regarding the claim of the Petitioner in the writ proceedings for regularization of services. The said arguments are to be taken as not helpful for the proceedings of this case. The various legal precedents cited for the Respondent are also not helpful for furtherance of this case as they are all in respect of the regularization of the services of the contract employees. In this case, the relief sought for is not for regularization of service but it is for reinstatement into service. But in this case also the question whether Petitioner has been a contract labourer or other wise is to be decided and it has been decided while deciding Point No.4 alone.

22. Evidently, Respondent ceased to take services of the Petitioner since 23.10.1998. In their counter the Respondent has chosen to plead that the contractor has terminated the services of the Petitioner in the year 1998 but as discussed above while deciding point No.4 Respondent failed to establish that there has been a contractor as an intermediary between them and the Petitioner. Thus, it can safely be inferred that Respondent is the organization which terminated the services of the Petitioner.

23. It is claim of the Petitioner that said termination is by way of an oral order and therefore, it is not possible for the Petitioner to produce any termination order. But the fact remains that even as per contentions of the Respondent they ceased to take the services of the Petitioner since the year 1998. Therefore, it can reasonably be accepted that there has been oral termination of the Petitioner with effect from 23.10.1998.

24. It is well established principle of law that every termination spells retrenchment. With this regard there is no dispute.

25. Sec.25F of the Industrial Disputes Act, 1947 deals with conditions precedent to retrenchment of workman. Sec.25 F reads as follows:-

“25-F: Conditions precedent to retrenchment of workmen:- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice.
- (b) The workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and
- (c) Notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].”

26. As can be gathered from the facts on record, Petitioner worked for one year continuously even as per the contentions of the Respondent, leaving alone the contentions of the Petitioner that she has been in continuous service with the Respondent since years together which has not been disproved by producing the

record maintained by the Respondent regarding the service of the Petitioner with the Respondent. Therefore, it can safely be held that Petitioner comes under the purview of the workman mentioned in Sec.25F by working with the Respondent for not less than one year. As per Sec.25F such a workman can not be retrenched, until he has been given one month's notice in writing indicating the reasons for retrenchment and only after expiry of the period of notice or otherwise by making payment of wages in lieu of such notice for the period of notice. Further more, the workman has to be paid retrenchment compensation as mentioned in Sec.25F (b) and there shall be compliance of Sec.25F (c).

27. Unless there is compliance of all the above mentioned mandatory pre-requisites the retrenchment of the workman is to be held as null and void, illegal and inoperative, as per the well established legal principles laid down by Hon'ble the Apex Court. In the case of Devinder Singh Vs. Municipal Council, Sanaur, {(2011) 6 SCC page 584} and in the case of Anup Sharma Vs. Public Health Division [(2010) 5 SCC 497] Hon'ble Supreme Court of India considered the effect of violation of Sec.25F and held that termination of service of a workman without complying with the mandatory provisions contained under Sec.25F (A) and (B) should ordinarily result in his reinstatement.

28. In the present case, evidently there is no compliance of the mandatory pre-requisites contemplated under Sec.25F (a) and (b) of Industrial Disputes Act, 1947. Therefore, the impugned termination order is bad and is liable to be set aside and Petitioner is entitled for reinstatement into service.

This point is answered accordingly.

### 29. Point No.6:

In view of the findings given in Point No.5 above, the impugned oral termination order dated 23.10.1998 is liable to be set aside. Consequently Petitioner is entitled for reinstatement into service as Sweeper with continuity of service. Considering the way in which the Petitioner's services were terminated while the writ proceedings launched by the Petitioner seeking for regularization is pending, it can safely be held that Petitioner is entitled for all back wages, and all other attendant benefits.

This point is answered accordingly.

### 30. Result:-

In the result, petition is allowed. The oral order dated 23.10.1998 of the Respondent terminating the services of the Petitioner is hereby set aside. Petitioner shall be reinstated into service forthwith. Respondent shall pay back wages to the Petitioner for the period from 23.10.1998

the date of termination of her services till the date of the Petitioner's reinstatement into service. Petitioner is entitled for all other consequential benefits as well.

Award passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant corrected by me on this the 30th day of August, 2013.

M. VIJAYA LAKSHMI, Presiding Officer

### Appendix of evidence

Witnesses examined for the

Petitioner

WW1: Smt. A. Susheela

Witnesses examined for the

Respondent

MW1: Smt. A. Rama Devi

### Documents marked for the Petitioner

- Ex.W1: Photostat copy of order in WPNo.29210/1998 dt.25.9.2000
- Ex.W2: Photostat copy of representation dt.11.4.98
- Ex.W3: Photostat copy of order in SLA (Civil) Np.13451/2001
- Ex.W4: Photostat copy of representation dt.3.5.96
- Ex.W5: Photostat copy of provisional receipt from Kapra Municipality dt.13.11.98
- Ex.W6: Photostat copy of representation dt.9.10.98
- Ex.W7: Photostat copy of order in WA No.1602/1999
- Ex.W8: Photostat copy of representation dt.24.10.2005

### Documents marked for the Respondent

- Ex.M1: Photostat copy of order in WP No.5592/1991
- Ex.M2: Photostat copy of receipt from Kapra Municipality dt.13.11.98
- Ex.M3: Photostat copy of letter dt.9.1.1999 issued by NFC to Commissioner, Kapra Municipality.
- Ex.M4: Photostat copy of letter dt. 30.9.97 issued by NFC to Sri P. Ramana Reddy, Contractor
- Ex.M5: Photostat copy of order in contempt case No.1903/98
- Ex.M6: Photostat copy of order in WPNo.29210/1998 dt.25.9.2000
- Ex.M7: Photostat copy of order in WA No.1602/1999
- Ex.M8: Photostat copy of receipt from Kapra Municipality dt.1.1.1999.

नई दिल्ली, 17 जनवरी, 2014

**का.आ. 447.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार चीफ एग्जीक्यूटिव नुक्लेअर फ्यूल काम्प्लेक्स डिपार्टमेंट ऑफ एटॉमिक एनर्जी, हैदराबाद के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 33/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-1-2014 को प्राप्त हुआ था।

[सं. एल-42012/03/2014-आई आर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 17th January, 2014

**S.O. 447.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 33/2006) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the Management of Chief Executive, Nuclear Fuel Complex, Department of Atomic Energy, Hyderabad and their workman, which was received by the Central Government on 13-1-2014.

[No. L-42012/03/2014-IR (DU)]

P. K. VENUGOPAL, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

**Present :** Smt. M. VIJAYA LAKSHMI, Presiding Officer

Dated the 30<sup>th</sup> day of August, 2013

**INDUSTRIAL DISPUTE L. C.No. 33/2006**

#### Between :

Smt. D Maroni W/o Kallaram,  
R/o Nehru Nagar Colony,  
Block-III, H.C.I.L. X Roads,  
ECIL Post, Ranga Reddy District,  
Hyderabad-62

....Petitioner

AND

Chief Executive,  
Nuclear Fuel Complex,  
Department of Atomic Energy,  
Hyderabad – 500 062

....Respondent

#### Appearances :

For the Petitioner : M/s. G. Ravi Mohan, G. Narersh  
Kumar, Vikas Sharma, K. Bhaskar  
& G. Pavan Kumar, Advocates

For the Respondent: Sri K. Suryanarayana, Advocate

#### AWARD

This is a petition filed invoking Sec.2A(2) of Industrial Disputes Act, 1947 by the Petitioner who is claiming to be the person who worked as sweeper in the Respondent unit seeking for setting aside the oral termination of services dated 23.10.1998 by the Respondent consequently to direct the Respondent to reinstate the Petitioner into service with continuity of service, back wages and all other attendant benefits.

#### 2. The averments made in the petition in brief are as follows:

Petitioner worked as Sweeper in the Respondent unit w.e.f. 1.5.1992 along with other similarly situated persons. Petitioner was engaged for cleaning, sweeping, dusting, watching of bend dumps. This work is perennial nature. Petitioner was working directly under the control of the Respondent and the salary of the Petitioner is being paid directly by the Respondent. However, Respondent brought non-existing contractor between the Petitioner and the Respondent, to show that there is no master and servant relationship between them. The Central Government, exercising the power under Sec.10 of Abolition of Contract Labour Act on the basis of the recommendations and in conciliation with the Central Advisory Board constituted under Sec.10 (1) of the said act issued notification dated 9.12.1976 prohibiting employment of contract labourers in respect of cleaning sweeping, dusting and watching of the building owned by or occupied by the establishment in respect of which the appropriate government under the said act is the Central Government. Petitioner's job is cleaning and sweeping. Once engaging contract labourers for said job is abolished, there is an obligation for the Respondent to consider regularising the Petitioner and similarly placed persons basing on the availability of vacancies. Even as per the mandate of the Apex Court it is the statutory obligation of the Principal Employer to absorb the contract labourer once the contract labour is abolished and to treat them as regular employees. It is the statutory obligation under Sections 11, 19 and 20 of the Factories Act to maintain cleanliness of the area in which the factory is situated. Respondent company is a factory. Even as per the condition contained in format of the license under Contract Labour Regulation and Abolition Act, Petitioner is entitled for regular pay of the minimum wages prescribed by the Government. Initially Petitioner was paid Rs.25/- per day. Subsequently it was enhanced to Rs. 45/- per day. Petitioner worked from May, 1992 to October, 1998 continuously without any break in service. Petitioner along with other similarly situated persons filed WP No.29210 of 1998 before the Hon'ble High Court of A.P. for absorbing as a regular employee and to pay other benefits on par with other employees. During the pendency of the said Writ petition, Petitioner was terminated from the service in the month of October, 1998 and the writ petition was

allowed by an order dated 25.9.2000. Against the said order WA No. 1602/1999 was filed by the Respondent before the Division Bench of the Hon'ble High Court of A.P. The said appeal was allowed on 23.2.2001. Against the said order Petitioner filed Special Leave to Appeal (Civil) No.13451/2001 before the Hon'ble Supreme Court of India and the same was withdrawn with a liberty to raise industrial dispute before the appropriate forum on 9.11.2001. Thus, the Petitioner raised the dispute. The premises of the Respondent including the residential quarters of the officers of the Respondent is in the same campus, i.e., within the premises of the Respondent. Cleaning activities of the Respondent quarters which includes, roads and maintenance of the buildings is to be taken care off by the Respondents only. An officer from the civil department used to take care of the work in respect of cleaning and maintenance of the factory buildings including the residential quarters. No work was entrusted to any outsider at any point of time i.e., contractor. Respondent used to maintain details of casual labourers, who were entrusted with the works of cleaning, gardening, civil works etc., which are perennial in nature. Petitioner was deputed to work as sweeper. Respondent never issued any appointment letter. However, salary was being paid by the Respondent Management on monthly basis. Attendance register and wages register were maintained by the Respondent and the same are in their custody. Respondent used to take the signature of the Petitioner in the wage register every month while paying salary in cash. There was no contract given to any contractor who is in between Respondent and Petitioner. In view of the notification issued by the Central Government. Respondent should not engage any contract labour. Admittedly, Petitioner is an uneducated woman and she has been exploited by the Respondent by paying less than minimum wages and terminating her services abruptly without any notice consequent to her filing WP before the Hon'ble High Court of A.P. and without following the procedure contemplated under Industrial Disputes Act, 1947 as well as Contract Labour Regulation and Abolition Act. There is violation of the provisions of Sec.25F of Industrial Disputes Act, 1947. Petitioner is the only earning member of her family and consequent to illegal termination of her services it has become difficult to eak out livelihood of her family.

### **3. Respondent filed his counter with the averments in brief as follows:**

Petitioner is supposed to approach Hon'ble Central Administrative Tribunal. Which has the requisite jurisdiction over the service matters as held by the Hon'ble Supreme Court of India in the case of Chandra Kumar Vs. Union of India and in view of the direction given in WP No.5592 of 1991 filed by Sri Kewal Singh and 17 others vide order dated 22.4.1991. Petitioner's claim is barred by limitation as services of the Petitioner said to have been

terminated way back in 1995 as the contract entered into with Sri P. Narasimha, the contractor, Respondent No.2 in WP No.29210/1998 expired by 30.6.1995. On this ground also petition is not maintainable. The Nuclear Fuel Complex has constructed manufacturing plants and administrative buildings with separate enclosures and the ingress and egress of this premises is guarded by Central Industrial Security Force of Ministry of Home Affairs. In so far as housing colony spreading in an area of 260 acres is concerned, watch and ward is taken care of by a security agency. Without any restriction for the entry in the colony by the general public for the purpose of visit the residents of the colony. The over all control including allotment of quarters vests with the Estate Officer, NFC. It is necessary to pay taxes which include service charges in respect of the said colony and it has termed within the jurisdiction of the KAPRA municipality. Since service charges running into lakhs of rupees have been paid to Kapra Municipality which facilitated the Respondent approaching them for taking up the house keeping jobs in DAE colony. The house keeping works of DAE housing colony is being taken care of by Kapra municipality. The requirement is being met through helpers deployed by such persons. Making such arrangements on the deployment of helpers a running contract for a period of 12 months executing urgent works such as jungle cutting in the sprawling Nuclear Fuel Complex, cleaning of storm water drains and clearance of garbage on roads vide letter dated 30.9.1997. Similar contract was in existence in DAE housing colony where some contract labourers were also engaged. Petitioner is one among the labourers engaged by the contractor who was awarded the work of cleaning of roads and storm water drains in housing colony. Her engagement is not within the knowledge and control of the Respondent at any time. It was outside the scope of the notification dated 9.12.1976 issued by the Central Government. There was no scope for direct payment by the Respondent to the Petitioner at any point of time. Petitioner filed WP No. 29210 of 1998 seeking for regularization of her services along with others. By virtue of order dated 22.10.1998 in WPMP 35709 of 1998 Hon'ble High Court of A.P. was pleased to direct that the position shall be maintained till further orders if the Petitioners were in service as on that date. Ultimately by virtue of order dated in WP 29210 of 1998 regularization of the services of the Petitioner among others was ordered. Respondents preferred WANO.1602/2000 which was allowed vide order dated 22.3.2001. Whereunder, the impugned judgement dated 25.9.2000 in WP No.29210 of 1998 has been set aside. Having maintained silence for a period of more than 5 years Petitioner approached this Tribunal now. It is a belated claim. Statement of the Petitioner that the work done by her was perennial in nature was denied. It was a stop gap arrangement prior to approach the Municipal Authorities of Kapra for taking assistants. Petitioner never worked directly under the control of the Respondent and salary



paid to her by the Respondent is outrightly denied. The engagement of the Petitioner by a contractor was outside the scope of notification dated 9.12.1976 issued by the Central Government under Contract Labour (R & A) Act, 1970. Petitioner's employer was not having any contractual obligation with her as on the date of issuance of the notification dated 9.12.1976. As per the mandate of Hon'ble Apex Court only those contract labourers who were working at the time of issuance of the said notification could be directed to be absorbed in the establishment of the Principal Employer. Petitioner was not a casual labourer on the rolls of the Respondent. Even otherwise as per the mandate of Hon'ble Apex Court casual labourers employed on temporary works are not entitled for regularization for absorption as it amounts to back door entries into service on the basis of completion of 240 days of work and the appointment to the service has to be made in accordance with the statutory rules and guidelines thereunder. Contract labourers are not entitled to the same pay scales as of the regular employees. The residential quarters are not within factory premises. Petitioner never directly engaged by the Respondent and she was never exploited. Petitioner rendered service as a contract labourer with a contractor. She can not claim for regularization of her services. In the writ proceedings for the similar cause of action, litigation was launched seeking for same relief in this proceedings is hit by *res judi cata*. Petition is liable to be dismissed.

4. To substantiate the contentions of the Petitioner WW1 was examined and Exhibits W1 to W8 are marked. While WW1 evidence was in progress and by virtue of the orders dated 17.3.2009, this matter i.e. LC No. 33/2006 along with other L. C. Nos. taking from L. C. No. 29 to 40/2006 are clubbed together in L.C. 28/2006 in pursuance of the memo filed by the Petitioner and it has been ordered that evidence is to be adduced in first case i.e., LC 28/2006. Accordingly in respect of all these cases i.e., LC/ 28 to 40 of 2006, Smt. T. Saradha, WW1 in L. C. 28/2006 alone has been cross examined on behalf of respondents, though separate chief examination affidavits of WW1 have been filed in all these cases. Further more, Respondent's evidence has been adduced in all these cases separately by examining MW1 and Management marked Ex.M1 to M8 in each case and arguments are also advanced in all these cases and Respondent has filed his written arguments in all these cases separately. In the given circumstances and for the sake of effective disposal of all these cases awards are being passed in all these cases separately and individually.

5. Heard the arguments of either party and written arguments of either party are also filed and they are considered.

**6. The points that arise for determination are:**

1. Whether this dispute is not maintainable before this tribunal for want of jurisdiction?

2. Whether this dispute is barred by limitation?
3. Whether the proceedings in writ petition No.29210 of 1998 operate as *res judi cata*?
4. Whether there is no relationship of workman and Management between the Petitioner and Respondent?
5. Whether there is termination of the service of the Petitioner by the Respondent through oral termination order dated 23.10.1998? If so, whether the said order is liable to be set aside?
6. To what relief Petitioner is entitled?

**7. Point No. 1:**

There is no dispute as to the fact that Petitioner is a workman and Respondent is an industry. But, Respondent is contending that this tribunal can not entertain this case for the reason, that as held in the case of Sri Chandra Kumar Vs. Union of India (AIR 1997 SC 1125) Petitioner is supposed to have his legal recourse from the Central Administrative Tribunal. This contention can not be accepted as a correct contention. It is undoubtedly an industrial dispute and the Respondent is admittedly a Central Government Organisation. This forum is Central Government Industrial Tribunal cum Labour Court whose function is to decide the industrial disputes arising from the industries which are Central Government undertakings. All the industrial disputes which arose within the jurisdiction of this tribunal and which concern with the Central Government Organisations, Central Government undertakings, are to be decided by this forum only as per the powers conferred on this tribunal. As to the Central Administrative Tribunal is concerned, all the service and administration related disputes pertaining to the officers and employees of all the Central Government Offices, Organisations and undertakings are to be dealt with by the said forum. Since the present dispute is an industrial dispute raised under Sec.2A(2) of Industrial Disputes Act, 1947, this tribunal got every jurisdiction to entertain this dispute.

This point is answered accordingly.

**8. Point No. 2 :**

It is the contention of the Respondent that present dispute is barred by limitation for the reason that Petitioner filed this petition five years after the Hon'ble High Court of A.P. decided WA No.1602/2000 in WP No.29210 /1998 by virtue of judgement dated 22.3.2001. In this regard, it can clearly be seen that there is no consonance between the writ proceedings and filing of this industrial dispute before this court. Further more, as on the date of filing of the present petition, no limitation was prescribed for preferring industrial disputes in the Industrial Disputes Act, 1947. Only recently i.e., in the year 2010 limitation



has been prescribed for preferring industrial disputes invoking Sec.2A(2) of Industrial Disputes Act, 1947 by enacting Sec.2A(3) of the said act. Thus, as on the relevant date, there was no prescription of period of limitation for preferring industrial disputes. It is not for the courts to prescribe any period of limitation. When the Act is silent as to the question of limitation, the courts are bound to entertain the cases, without looking into the belatedness or otherwise in filing the same, as it is the duty of the courts to interpret and implement the law enacted by the parliament only, but not to substitute or incorporate any new law. In the given circumstances, it is to be held that this petition is not barred by limitation.

This point is answered accordingly.

### 9. Point No. 3 :

The writs filed invoking the extraordinary jurisdiction of the Constitutional Courts provided under Article 226 of Constitution of India will never act as res judicata for the cases filed before the civil courts and tribunals which are clothed with ordinary jurisdiction by the various enactments. This tribunal is clothed with the ordinary jurisdiction to entertain industrial disputes. Whereas while preferring writs before Hon'ble High Court of A.P. the Petitioner has invoked extra ordinary jurisdiction provided under Article 226 of Constitution of India. Further more, Petitioner and others have withdrawn the special leave petition filed by them challenging the judgement dated 22.3.2001 rendered in the rendered by Hon'ble High Court of A.P. in WA No.1602/2000 only to raise an industrial dispute and said withdrawal has been accepted by Hon'ble Supreme Court of India, as can be seen in Ex.W3 the order rendered in Special Leave to Appeal(Civil) No.13451/2001.

10. Further more, the writ proceedings were launched by the Petitioner and other similarly placed persons seeking for regularisation of their services with the Respondent. Whereas, the present industrial dispute is raised by the Petitioner, consequent to termination of her services while the writ appeal was pending, seeking for setting aside the oral termination order dated 23.10.1998 of the Respondent, whereunder Petitioner's services were terminated consequently directing the Respondent to reinstate the Petitioner into service with attendant benefits. Therefore, cause of action for filing the writ proceeding and for raising the present industrial dispute and also nature of these two proceedings are totally different and distinct.

11. In the given circumstances, it can safely be held that the proceedings of WP No.29210/1998 will not act as res judi cata for the present proceedings.

This point is answered accordingly.

### 12. Point No. 4 :

Admittedly, Petitioner has worked with the Respondent organisation. It can be said so since, in their

counter Respondent has not disputed regarding the fact that Petitioner has worked with them.

13. It is the contention of the Petitioner that she has been engaged by the Respondent for cleaning, sweeping, dusting, watching bend dumps, the work, nature of which is perennial and that the Petitioner was working directly under the control of the Respondent receiving salary directly from the Respondent but however, Respondent brought non-existing contractor between the Petitioner and Respondent to show that there is no master and servant relationship between them.

14. Whereas, Respondent is contending that house keeping works in DAE housing colony, in which the staff of the Respondent unit are housed, is being taken care of by CAPRA municipality, whereas requirement of plant of the Respondent is being met through helpers(COS) deployed for the said purpose, however, prior to making this arrangements through CAPRA municipality and / or deployment of helpers(COS) a running contract for a period of 12 months was awarded for executing urgent works such as, jungle cutting in the NFC works as well as DAE Housing colony, where some contract labourers were engaged and that Petitioner is one among the labourers engaged by the contractor who was awarded with the work of cleaning of roads and storm water drains in housing colony.

15. From the above contention and counter contention of the Petitioner and Respondent, what one can gather is, that admittedly Petitioner has been working for the Respondent unit, and she was awarded with the work of cleaning of the premises, but it is the contention of the Respondent, contrary to the contentions of the Petitioner, that Petitioner has been a contract labourer engaged by the contractor to whom the cleaning work was entrusted by the Respondent but not a person directly engaged by the Respondent.

16. When once Respondent accepted the fact that Petitioner has worked with him but claimed that there is an intermediary between them i.e., a contractor, it is for the Respondent to establish before the court that there has been such contractor and the said contractor engaged the Petitioner for cleaning work entrusted to her by the Respondent. Further more, it is to be verified by the court, if it is established before the court that there has been such a contractor, whether the principal employer i.e., the Respondent was exercising control over the functioning of the Petitioner or whether through the contractor only the work was being done. Who is exercising control over the conditions of the service of the Petitioner is a crucial aspect to decide whether there is master and servant relationship between the principal employer and the workman or whether the alleged contractor himself remained as a master for the workman and other such relevant aspects. In this regard, it is well established legal principle that "the Industrial Tribunal/court will have to

consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere rule/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer.” This is the legal principle laid down by the Hon’ble Supreme Court of India in the case of *Steel Authority of India and ors. Vs. National Union Waterfront Workers and Others* [(2001) 7 SCC page 1], which is relied upon by Learned Counsel for the Respondent himself.

17. All the above referred crucial aspects in this case can be gathered from the relevant record maintained by the Respondent in connection with the alleged contract entrusted to the contractor regarding the way in which the work was extracted from the Petitioner and other workers and also the mode of payment of wages to the Petitioner and other workmen and other related aspects. It is the burden of the Respondent to place all the relevant record before this tribunal. But the only record produced by the Respondent regarding the alleged contract is Ex.M4, the letter dated 30.9.97 said to have been issued by the Respondent to one Sri P. Ramana Reddy a contractor. There is no record to show that Respondent called for tenders for given contract work and selected any persons as contractors through any selection process. While she was under cross examination MW1 had admitted that they have not filed any document to show that contractor was engaged or agreement was entered between contractor and Management.

18. Further, in Ex.M4 it is averred that “A daily report indicating the details of labourers and vehicle engaged on the work for each day shall be submitted to the Engineer-in-charge, before 10.00 AM on every working day. Payment of wages to contract labourers shall be as per regulations laid down in CPWD contractors labour regulation to be applicable to Nuclear Fuel Complex. Intimation regarding wage period, date of payment, place and time of disbursement shall be given to the Engineer-in-charge within 2 (two) weeks from the date of issue of this order”. If the work was done in furtherance of Ex.M4 order, in every likelihood the daily report indicating details of labourers and vehicles engaged for the work, would have been submitted by the contractor to the Engineer-in-charge on every working day and further intimation regarding the wage period date of payment, place and time of disbursement of wages also would have been given to the Engineer-in-charge and such documents will be available with the Respondent. But no such documents are placed before the court which indicates that there are no such documents and therefore Ex.M4 has never been acted upon.

19. In the absence of proper proof of the fact that Petitioner has been a labourer worked under a contractor but not a direct employee of the Respondent, it is to be taken that she is the direct employee of the Respondent for the reason that it is an admitted fact that Petitioner worked for the Respondent as a sweeper. It can be taken that there is no proper proof of the contentions of the Respondent that Petitioner has been working under a contractor, for the above referred reason that Respondent failed to produce that all the relevant documents which will certainly will be in their custody, if actually Petitioner has been working under a contractor to whom the Respondent entrusted the cleaning of the premises as a contract work. Therefore, it can safely be held that Respondent failed to establish that Petitioner has been working under a contractor who has been entrusted with the job of cleaning of their premises but not their direct employee.

20. In view of the foregone discussion it can safely be held that there is relationship of workman and Management between the Petitioner and the Respondent which indicates that there is master and servant relationship between them.

This point is answered accordingly.

**21. Point No. 5 :**

As can be gathered from the line of the defence taken in this case by the Respondent and the arguments built up and advanced for them, what one can see is that they are meeting the claim of the Petitioner, as if the Petitioner is seeking for regularization of services. But the fact remains that Petitioner is seeking for setting aside the order under which Petitioner’s services were terminated and for reinstatement into service and other consequential reliefs. In the writ proceedings Petitioner sought for regularization of service but while writ appeal was pending disposal, as the Petitioner’s services were terminated, this industrial dispute is raised seeking for setting aside the said termination order and consequential reinstatement of the Petitioner into service and for grant of other attendant benefits. Ignoring these aspects Respondent is advancing their arguments regarding the claim of the Petitioner in the writ proceedings for regularization of services. The said arguments are to be taken as not helpful for the proceedings of this case. The various legal precedents cited for the Respondent are also not helpful for furtherance of this case as they are all in respect of the regularization of the services of the contract employees. In this case, the relief sought for is not for regularization of service but it is for reinstatement into service. But in this case also the question whether Petitioner has been a contract labourer or otherwise is to be decided and it has been decided while deciding Point No.4 alone.

22. Evidently, Respondent ceased to take services of the Petitioner since 23.10.1998. In their counter the

Respondent has chosen to plead that the contractor has terminated the services of the Petitioner in the year 1998 but as discussed above while deciding point No.4 Respondent failed to establish that there has been a contractor as an intermediary between them and the Petitioner. Thus, it can safely be inferred that Respondent is the organization which terminated the services of the Petitioner.

23. It is claim of the Petitioner that said termination is by way of an oral order and therefore, it is not possible for the Petitioner to produce any termination order. But the fact remains that even as per contentions of the Respondent they ceased to take the services of the Petitioner since the year 1998. Therefore, it can reasonably be accepted that there has been oral termination of the Petitioner with effect from 23.10.1998.

24. It is well established principle of law that every termination spells retrenchment. With this regard there is no dispute.

25. Sec.25F of the Industrial Disputes Act, 1947 deals with conditions precedent to retrenchment of workman. Sec.25 F reads as follows:-

“25-F: Conditions precedent to retrenchment of workmen:-

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice.
- (b) The workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and
- (c) Notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the official Gazette].”

26. As can be gathered from the facts on record, Petitioner worked for one year continuously even as per the contentions of the Respondent, leaving alone the contentions of the Petitioner that she has been in continuous service with the Respondent since years together which has not been disproved by producing the record maintained by the Respondent regarding the service of the Petitioner with the Respondent. Therefore, it can safely be held that Petitioner comes under the purview of

the workman mentioned in Sec.25F by working with the Respondent for not less than one year. As per Sec.25F such a workman can not be retrenched, until he has been given one month's notice in writing indicating the reasons for retrenchment and only after expiry of the period of notice or otherwise by making payment of wages in lieu of such notice for the period of notice. Further more, the workman has to be paid retrenchment compensation as mentioned in Sec.25F (b) and there shall be compliance of Sec.25F (c).

27. Unless there is compliance of all the above mentioned mandatory pre requisites the retrenchment of the workman is to be held as null and void, illegal and inoperative, as per the well established legal principles laid down by Hon'ble the Apex Court. In the case of Devinder Singh Vs. Municipal Council, Sanaur, [(2011) 6 SCC page 584] and in the case of Anup Sharma Vs. Public Health Division [(2010) 5 SCC 497] Hon'ble Supreme Court of India considered the effect of violation of Sec.25F and held that termination of service of a workman without complying with the mandatory provisions contained under Sec.25F (A) and (B) should ordinarily result in his reinstatement.

28. In the present case, evidently there is no compliance of the mandatory pre-requisites contemplated under Sec.25F (a) and (b) of Industrial Disputes Act, 1947. Therefore, the impugned termination order is bad and is liable to be set aside and Petitioner is entitled for reinstatement into service.

This point is answered accordingly.

#### 29. Point No.6 :

In view of the findings given in Point No.5 above, the impugned oral termination order dated 23.10.1998 is liable to be set aside. Consequently Petitioner is entitled for reinstatement into service as Sweeper with continuity of service. Considering the way in which the Petitioner's services were terminated while the writ proceedings launched by the Petitioner seeking for regularization is pending, it can safely be held that Petitioner is entitled for all back wages, and all other attendant benefits.

This point is answered accordingly.

#### 30. Result :

In the result, petition is allowed. The oral order dated 23.10.1998 of the Respondent terminating the services of the Petitioner is hereby set aside. Petitioner shall be reinstated into service forthwith. Respondent shall pay back wages to the Petitioner for the period from 23.10.1998 the date of termination of her services till the date of the Petitioner's reinstatement into service. Petitioner is entitled for all other consequential benefits as well.

Award passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant corrected by me on this the 30<sup>th</sup> day of August, 2013.

M. VIJAYA LAKSHMI, Presiding Officer

#### Appendix of evidence

Witnesses examined for : Witnesses examined for  
the Petitioner the Respondent

WW1: Smt. D. Maroni MW1: Smt. A. Rama Devi

#### Documents marked for the Petitioner

- Ex.W1: Photostat copy of order in WPN0.29210/1998 dt.25.9.2000  
Ex.W2: Photostat copy of representation dt.11.4.98  
Ex.W3: Photostat copy of order in SLA (Civil) Np.13451/2001  
Ex.W4: Photostat copy of representation dt.3.5.96  
Ex.W5: Photostat copy of provisional receipt from Kapra Municipality dt.13.11.98  
Ex.W6: Photostat copy of representation dt.9.10.98  
Ex.W7: Photostat copy of order in WA No.1602/1999  
Ex.W8: Photostat copy of representation dt. 24.10.2005

#### Documents marked for the Respondent

- Ex.M1: Photostat copy of order in WP No.5592/1991  
Ex.M2: Photostat copy of receipt from Kapra Municipality dt.13.11.98  
Ex.M3: Photostat copy of letter dt.9.1.1999 issued by NFC to Commissioner, Kapra Municipality.  
Ex.M4: Photostat copy of letter dt. 30.9.97 issued by NFC to Sri P. Ramana Reddy, Contractor  
Ex.M5: Photostat copy of order in contempt case No.1903/98  
Ex.M6: Photostat copy of order in WPN0.29210/1998 dt.25.9.2000  
Ex.M7: Photostat copy of order in WA No.1602/1999  
Ex.M8: Photostat copy of receipt from Kapra Municipality dt.1.1.1999.

#### आदेश

नई दिल्ली, 17 जनवरी, 2014

**का.आ. 448.**—जबकि केन्द्रीय सरकार का यह मत है कि बजाज इलैक्ट्रीकल्स के प्रबंधन और उनके कामगारों के बीच एक औद्योगिक विवाद था।

और जबकि इस विवाद में राष्ट्रीय महत्व का प्रश्न शामिल है एवं ऐसी प्रकृति का भी है कि इसमें एक राज्य से अधिक में स्थित बजाज इलैक्ट्रीकल्स के प्रतिष्ठानों के इसमें रुचि रखने अथवा प्रभावित होने की संभावना है।

और जबकि केन्द्रीय सरकार ने औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 7ख द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मुंबई में मुख्यालय सहित श्रम मंत्रालय के आदेश संख्या एल-42011/07/2009-आईआर (डीयू) दिनांक 4-6-2013 द्वारा राष्ट्रीय औद्योगिक अधिकरण गठित किया तथा न्यायमूर्ति श्री गौरी शंकर सराफ को इसके पीठासीन अधिकारी के रूप में नियुक्त किया और उक्त अधिनियम की धारा 10 की उप-धारा (1क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उक्त औद्योगिक विवाद को न्यायनिर्णयन हेतु उक्त राष्ट्रीय औद्योगिक अधिकरण को निर्दिष्ट कर दिया;

और जबकि केन्द्र सरकार ने दिनांक 4-2-2011 के आदेश द्वारा राष्ट्रीय औद्योगिक अधिकरण का पुनर्गठन किया और न्यायमूर्ति श्री गौरी शंकर सराफ को इसके पीठासीन अधिकारी के रूप में नियुक्त किया;

और जबकि न्यायमूर्ति श्री गौरी शंकर सराफ ने अपनी सेवा निवृत्ति पर उपर्युक्त राष्ट्रीय औद्योगिक न्यायाधिकरण का कार्यभार छोड़ दिया;

अतः अब, मुंबई में मुख्यालय सहित राष्ट्रीय औद्योगिक अधिकरण गठित किया जाता है जिसके पीठासीन अधिकारी केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय संख्या 1 के पीठासीन अधिकारी न्यायमूर्ति श्री सत्यपूत महरोत्रा होंगे और उपर्युक्त विवाद को न्यायनिर्णयन हेतु उपर्युक्त राष्ट्रीय औद्योगिक अधिकरण को इस निदेश के साथ निर्दिष्ट किया जाता है कि न्यायमूर्ति श्री सत्यपूत महरोत्रा इस मामले में उस चरण से आगे कार्यवाही करेंगे जिस चरण पर यह इसे न्यायमूर्ति श्री गौरी शंकर सराफ द्वारा छोड़ा गया था और इसे तदनुसार निपटाएंगे।

[सं. एल-42011/07/2009-आईआर (डीयू)]  
पी. के. वेणुगोपाल, अनुभाग अधिकारी

#### ORDER

New Delhi, the 17th January, 2014

**S.O. 448.**—Whereas the Central Government is of the opinion that an industrial dispute existed between the management of Bajaj Electricals and their workmen :

And whereas, the industrial dispute involves question of national importance and also is of such nature that are likely to be interested in or affected;

And whereas, the Central Government in exercise of the powers conferred by Section 7B of the I.D. Act, 1947 (14 of 1947) constituted a National Industrial Tribunal vide Ministry of Labour Order No. L-42011/07/2009-IR (DU) dated 4-6-2013 with headquarters at Mumbai and appointed Justice Shri Justice Gauri Shanker Sarraf as its Presiding Officer and in exercise of the powers conferred by sub-section (1A) of Section 10 of the said Act, referred the said Industrial Dispute to the said National Industrial Tribunal for adjudication;

And whereas, Central Government vide order dated 4-2-2011 reconstituted the National Tribunal and appointed Justice Shri Gauri Shanker Sarraf as its Presiding Officer;



And whereas, Justice Gauri Shanker Sarraf relinquished the charge of the said National Industrial Tribunal on his retirement;

Now therefore, a National Industrial Tribunal is constituted with Headquarters at Mumbai with Justice Shri Satya Poot Mehrotra, Presiding Officer of CGIT-cum-Labour Court No. 1, Mumbai as its Presiding Officer and the above said dispute is referred to the said National Industrial Tribunal for adjudication with a direction that Justice Shri Satya Poot Mehrotra shall proceed in the matter from the stage at which it was left by Justice Shri Gauri Shanker Sarraf and dispose of the same accordingly.

[No. L-42011/07/2009-IR (DU)]

P. K. VENUGOPAL, Section Officer

### आदेश

नई दिल्ली, 17 जनवरी, 2014

**का.आ. 449.**—जबकि केन्द्रीय सरकार का यह मत है कि बजाज इलैक्ट्रीकल्स के प्रबंधन और उनके कामगारों के बीच एक औद्योगिक विवाद था।

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और जबकि केन्द्रीय सरकार ने औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 7ख द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मुंबई में मुख्यालय सहित श्रम मंत्रालय के आदेश संख्या एल-42011/42/2013-आईआर (डीयू) दिनांक 27-1-2011 द्वारा राष्ट्रीय औद्योगिक अधिकरण गठित किया तथा न्यायमूर्ति श्री गौरी शंकर सर्राफ को इसके पीठासीन अधिकारी के रूप में नियुक्त किया और उक्त अधिनियम की धारा 10 की उप-धारा (1क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उक्त औद्योगिक विवाद को न्यायनिर्णयन हेतु उक्त राष्ट्रीय औद्योगिक अधिकरण को निर्दिष्ट कर दिया;

और जबकि केन्द्र सरकार ने दिनांक 4-2-2011 के आदेश द्वारा राष्ट्रीय औद्योगिक अधिकरण का पुनर्गठन किया और न्यायमूर्ति श्री गौरी शंकर सर्राफ को इसके पीठासीन अधिकारी के रूप में नियुक्त किया;

और जबकि न्यायमूर्ति श्री गौरी शंकर सर्राफ ने अपनी सेवा निवृत्ति पर उपर्युक्त राष्ट्रीय औद्योगिक न्यायाधिकरण कार्यभार छोड़ दिया;

अतः अब, मुंबई में मुख्यालय सहित राष्ट्रीय औद्योगिक अधिकरण गठित किया जाता है जिसके पीठासीन अधिकारी केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय संख्या 1 के पीठासीन अधिकारी न्यायमूर्ति श्री सत्यपूत महरोत्रा होंगे और उपर्युक्त विवाद को न्यायनिर्णयन हेतु उपर्युक्त राष्ट्रीय औद्योगिक अधिकरण को इस निदेश के साथ निर्दिष्ट किया जाता है कि न्यायमूर्ति श्री सत्यपूत महरोत्रा इस मामले में उस चरण से आगे कार्यवाही करेंगे जिस चरण पर यह इसे

न्यायमूर्ति श्री गौरी शंकर सर्राफ द्वारा छोड़ा गया था और इसे तदनुसार निपटाएंगे।

[सं. एल-42011/42/2013-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

### ORDER

New Delhi, the 17th January, 2014

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And whereas, the industrial dispute involves question of national importance and also is of such nature that are likely to be interested in or affected;

And whereas, the Central Government in exercise of the powers conferred by Section 7B of the I.D. Act, 1947 (14 of 1947) constituted a National Industrial Tribunal vide Ministry of Labour Order No. L-42011/42/2013-IR (DU) dated 27-1-2011 with headquarters at Mumbai and appointed Justice Shri Justice Gauri Shanker Sarraf as its Presiding Officer and in exercise of the powers conferred by sub-section (1A) of Section 10 of the said Act, referred the said Industrial Dispute to the said National Industrial Tribunal for adjudication;

And whereas, Central Government vide order dated 4-2-2011 reconstituted the National Tribunal and appointed Justice Shri Gauri Shanker Sarraf as its Presiding Officer;

And whereas, Justice Gauri Shanker Sarraf relinquished the charge of the said National Industrial Tribunal on his retirement;

Now therefore, a National Industrial Tribunal is constituted with Headquarters at Mumbai with Justice Shri Satya Poot Mehrotra, Presiding Officer of CGIT-cum-Labour Court No. 1, Mumbai as its Presiding Officer and the above said dispute is referred to the said National Industrial Tribunal for adjudication with a direction that Justice Shri Satya Poot Mehrotra shall proceed in the matter from the stage at which it was left by Justice Shri Gauri Shanker Sarraf and dispose of the same accordingly.

[No. L-42011/42/2013-IR (DU)]

P. K. VENUGOPAL, Section Officer

नई दिल्ली, 17 जनवरी, 2014

**का.आ. 450.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार चीफ एग्जीक्यूटिव न्यूक्लियर फ्यूल डिपार्टमेंट ऑफ एटॉमिक एनर्जी, हैदराबाद के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 35/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-1-2014 को प्राप्त हुआ था।

[सं. एल-42012/03/2014-आई आर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी



New Delhi, the 17th January , 2014

**S.O. 450.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 35/2006) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the Management of Chief Executive, Nuclear Fuel Complex, Department of Atomic Energy, Hyderabad and their workman, which was received by the Central Government on 13-1-2014.

[No. L-42012/03/2014-IR (DU)]

P. K. VENUGOPAL, Section Officer

### ANNEXURE

### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT AT HYDERABAD

**PRESENT :** Smt. M. Vijaya Lakshmi, Presiding Officer

Dated the 30<sup>th</sup> day of August, 2013

### INDUSTRIAL DISPUTE L.C. No. 35/2006

#### Between :

Smt. B. Jayamma W/o Mallaiah,  
R/o H.No. 10-1/92,  
Nehru Nagar, Block-III,  
H.C.L. X Roads, ECIL Post,  
Ranga Reddy District,  
Hyderabad-62

....Petitioner

AND

Chief Executive,  
Nuclear Fuel Complex,  
Department of Atomic Energy,  
Hyderabad – 500 062

....Respondent

#### Appearances :

For the Petitioner : M/s. G. Ravi Mohan, G. Narersh  
Kumar, Vikas Sharma, K. Bhaskar  
& G. Pavan Kumar, Advocates

For the Respondent: Sri K. Suryanarayana, Advocate

### AWARD

This is a petition filed invoking Sec.2A(2) of Industrial Disputes Act, 1947 by the Petitioner who is claiming to be the person who worked as sweeper in the Respondent unit seeking for setting aside the oral termination of services dated 23.10.1998 by the Respondent consequently to direct the Respondent to reinstate the Petitioner into service with continuity of service, back wages and all other attendant benefits.

#### 2. The averments made in the petition in brief are as follows:

Petitioner worked as Sweeper in the Respondent unit w.e.f. 1.5.1992 along with other similarly situated

persons. Petitioner was engaged for cleaning, sweeping, dusting, watching of bend dumps. This work is perennial nature. Petitioner was working directly under the control of the Respondent and the salary of the Petitioner is being paid directly by the Respondent. However, Respondent brought non-existing contractor between the Petitioner and the Respondent, to show that there is no master and servant relationship between them. The Central Government, exercising the power under Sec.10 of Abolition of Contract Labour Act on the basis of the recommendations and in conciliation with the Central Advisory Board constituted under Sec.10 (1) of the said act issued notification dated 9.12.1976 prohibiting employment of contract labourers in respect of cleaning sweeping, dusting and watching of the building owned by or occupied by the establishment in respect of which the appropriate government under the said act is the Central Government. Petitioner's job is cleaning and sweeping. Once engaging contract labourers for said job is abolished, there is an obligation for the Respondent to consider regularising the Petitioner and similarly placed persons basing on the availability of vacancies. Even as per the mandate of the Apex Court it is the statutory obligation of the Principal Employer to absorb the contract labourer once the contract labour is abolished and to treat them as regular employees. It is the statutory obligation under Sections 11, 19 and 20 of the Factories Act to maintain cleanliness of the area in which the factory is situated. Respondent company is a factory. Even as per the condition contained in format of the license under Contract Labour Regulation and Abolition Act, Petitioner is entitled for regular pay of the minimum wages prescribed by the Government. Initially Petitioner was paid Rs. 25 per day. Subsequently it was enhanced to Rs. 45 per day. Petitioner worked from May, 1992 to October, 1998 continuously without any break in service. Petitioner along with other similarly situated persons filed WP No.29210 of 1998 before the Hon'ble High Court of A.P. for absorbing as a regular employee and to pay other benefits on par with other employees. During the pendency of the said Writ petition, Petitioner was terminated from the service in the month of October, 1998 and the writ petition was allowed by an order dated 25.9.2000. Against the said order WA No. 1602/1999 was filed by the Respondent before the Division Bench of the Hon'ble High Court of A.P. The said appeal was allowed on 23.2.2001. Against the said order Petitioner filed Special Leave to Appeal (Civil) No.13451/2001 before the Hon'ble Supreme Court of India and the same was withdrawn with a liberty to raise industrial dispute before the appropriate forum on 9.11.2001. Thus, the Petitioner raised the dispute. The premises of the Respondent including the residential quarters of the officers of the Respondent is in the same campus, i.e., within the premises of the Respondent. Cleaning activities of the Respondent quarters which includes, roads and maintenance of the buildings is to be

taken care off by the Respondents only. An officer from the civil department used to take care of the work in respect of cleaning and maintenance of the factory buildings including the residential quarters. No work was entrusted to any outsider at any point of time i.e., contractor. Respondent used to maintain details of casual labourers, who were entrusted with the works of cleaning, gardening, civil works etc., which are perennial in nature. Petitioner was deputed to work as sweeper. Respondent never issued any appointment letter. However, salary was being paid by the Respondent Management on monthly basis. Attendance register and wages register were maintained by the Respondent and the same are in their custody. Respondent used to take the signature of the Petitioner in the wage register every month while paying salary in cash. There was no contract given to any contractor who is in between Respondent and Petitioner. In view of the notification issued by the Central Government. Respondent should not engage any contract labour. Admittedly, Petitioner is an uneducated woman and she has been exploited by the Respondent by paying less than minimum wages and terminating her services abruptly without any notice consequent to her filing WP before the Hon'ble High Court of A.P. and without following the procedure contemplated under Industrial Disputes Act, 1947 as well as Contract Labour Regulation and Abolition Act. There is violation of the provisions of Sec. 25F of Industrial Disputes Act, 1947. Petitioner is the only earning member of her family and consequent to illegal termination of her services it has become difficult to eak out livelihood of her family.

### **3. Respondent filed his counter with the averments in brief as follows:**

Petitioner is supposed to approach Hon'ble Central Administrative Tribunal. Which has the requisite jurisdiction over the service matters as held by the Hon'ble Supreme Court of India in the case of Chandra Kumar Vs. Union of India and in view of the direction given in WP No. 5592 of 1991 filed by Sri Kewal Singh and 17 others vide order dated 22.4.1991. Petitioner's claim is barred by limitation as services of the Petitioner said to have been terminated way back in 1995 as the contract entered into with Sri P. Narasimha, the contractor, Respondent No. 2 in WP No. 29210/1998 expired by 30.6.1995. On this ground also petition is not maintainable. The Nuclear Fuel Complex has constructed manufacturing plants and administrative buildings with separate enclosures and the ingress and egress of this premises is guarded by Central Industrial Security Force of Ministry of Home Affairs. In so far as housing colony spreading in an area of 260 acres is concerned, watch and ward is taken care of by a security agency. Without any restriction for the entry in the colony by the general public for the purpose of visit the residents of the colony. The over all control including allotment of quarters vests with the Estate Officer, NFC. It is necessary

to pay taxes which include service charges in respect of the said colony and it has termed within the jurisdiction of the KAPRA municipality. Since service charges running into lakhs of rupees have been paid to Kapra Municipality which facilitated the Respondent approaching them for taking up the house keeping jobs in DAE colony. The house keeping works of DAE housing colony is being taken care of by Kapra municipality. The requirement is being met through helpers deployed by such persons. Making such arrangements on the deployment of helpers a running contract for a period of 12 months executing urgent works such as jungle cutting in the sprawling Nuclear Fuel Complex, cleaning of storm water drains and clearance of garbage on roads vide letter dated 30.9.1997. Similar contract was in existence in DAE housing colony where some contract labourers were also engaged. Petitioner is one among the labourers engaged by the contractor who was awarded the work of cleaning of roads and storm water drains in housing colony. Her engagement is not within the knowledge and control of the Respondent at any time. It was outside the scope of the notification dated 9.12.1976 issued by the Central Government. There was no scope for direct payment by the Respondent to the Petitioner at any point of time. Petitioner filed WP No. 29210 of 1998 seeking for regularization of her services along with others. By virtue of order dated 22.10.1998 in WPMP 35709 of 1998 Hon'ble High Court of A.P. was pleased to direct that the position shall be maintained till further orders if the Petitioners were in service as on that date. Ultimately by virtue of order dated in WP 29210 of 1998 regularization of the services of the Petitioner among others was ordered. Respondents preferred WA No.1602/2000 which was allowed vide order dated 22.3.2001. Whereunder, the impugned judgement dated 25.9.2000 in WP No. 29210 of 1998 has been set aside. Having maintained silence for a period of more than 5 years Petitioner approached this Tribunal now. It is a belated claim. Statement of the Petitioner that the work done by her was perennial in nature was denied. It was a stop gap arrangement prior to approach the Municipal Authorities of Kapra for taking assistants. Petitioner never worked directly under the control of the Respondent and salary paid to her by the Respondent is outrightly denied. The engagement of the Petitioner by a contractor was outside the scope of notification dated 9.12.1976 issued by the Central Government under Contract Labour (R & A) Act, 1970. Petitioner's employer was not having any contractual obligation with her as on the date of issuance of the notification dated 9.12.1976. As per the mandate of Hon'ble Apex Court only those contract labourers who were working at the time of issuance of the said notification could be directed to be absorbed in the establishment of the Principal Employer. Petitioner was not a casual labourer on the rolls of the Respondent. Even otherwise as per the mandate of Hon'ble Apex Court casual labourers employed on temporary works are not entitled for regularization for

absorption as it amounts to back door entries into service on the basis of completion of 240 days of work and the appointment to the service has to be made in accordance with the statutory rules and guidelines thereunder. Contract labourers are not entitled to the same pay scales as of the regular employees. The residential quarters are not within factory premises. Petitioner never directly engaged by the Respondent and she was never exploited. Petitioner rendered service as a contract labourer with a contractor. She can not claim for regularization of her services. In the writ proceedings for the similar cause of action, litigation was launched seeking for same relief in this proceedings is hit by *res judi cata*. Petition is liable to be dismissed.

4. To substantiate the contentions of the Petitioner WW1 was examined and Exhibits W1 to W8 are marked. While WW1 evidence was in progress and by virtue of the orders dated 17.3.2009, this matter i.e. LC No. 35/2006 along with other L. C. Nos. taking from L. C. No. 29 to 40/2006 are clubbed together in L. C. 28/2006 in pursuance of the memo filed by the Petitioner and it has been ordered that evidence is to be adduced in first case i.e., LC 28/2006. Accordingly in respect of all these cases i.e., LC/ 28 to 40 of 2006, Smt. T. Saradha, WW1 in L. C. 28/2/2006 alone has been cross examined on behalf of respondents, though separate chief examination affidavits of WW1 have been filed in all these cases. Further more, Respondent's evidence has been adduced in all these cases separately by examining MW1 and Management marked Ex. M1 to M8 in each case and arguments are also advanced in all these cases and Respondent has filed his written arguments in all these cases separately. In the given circumstances and for the sake of effective disposal of all these cases awards are being passed in all these cases separately and individually.

5. Heard the arguments of either party and written arguments of either party are also filed and they are considered.

**6. The points that arise for determination are:**

1. Whether this dispute is not maintainable before this tribunal for want of jurisdiction?
2. Whether this dispute is barred by limitation?
3. Whether the proceedings in writ petition No. 29210 of 1998 operate as *res judi cata*?
4. Whether there is no relationship of workman and Management between the Petitioner and Respondent?
5. Whether there is termination of the service of the Petitioner by the Respondent through oral termination order dated 23.10.1998? If so, whether the said order is liable to be set aside?
6. To what relief Petitioner is entitled?

**7. Point No. 1:**

There is no dispute as to the fact that Petitioner is a workman and Respondent is an industry. But, Respondent is contending that this tribunal can not entertain this case for the reason, that as held in the case of *Sri Chandra Kumar vs. Union of India* (AIR 1997 SC 1125) Petitioner is supposed to have his legal recourse from the Central Administrative Tribunal. This contention can not be accepted as a correct contention. It is undoubtedly an industrial dispute and the Respondent is admittedly a central government organisation. This forum is Central Government Industrial Tribunal -cum- Labour Court whose function is to decide the industrial disputes arising from the industries which are Central Government undertakings. All the industrial disputes which arose within the jurisdiction of this tribunal and which concern with the Central Government organisations Central Government undertakings, are to be decided by this forum only as per the powers conferred on this tribunal. As to the Central Administrative Tribunal is concerned, all the service and administration related disputes pertaining to the officers and employees of all the central government offices, organisations and undertakings are to be dealt with by the said forum. Since the present dispute is an industrial dispute raised under Sec. 2A(2) of Industrial Disputes Act, 1947, this tribunal got every jurisdiction to entertain this dispute.

This point is answered accordingly.

**8. Point No. 2 :**

It is the contention of the Respondent that present dispute is barred by limitation for the reason that Petitioner filed this petition five years after the Hon'ble High Court of A.P. decided WA No.1602/2000 in WP No. 29210/1998 by virtue of judgement dated 22.3.2001. In this regard, it can clearly be seen that there is no consonance between the writ proceedings and filing of this industrial dispute before this court. Further more, as on the date of filing of the present petition, no limitation was prescribed for preferring industrial disputes in the Industrial Disputes Act, 1947. Only recently i.e., in the year 2010 limitation has been prescribed for preferring industrial disputes invoking Sec. 2A(2) of Industrial Disputes Act, 1947 by enacting Sec. 2A(3) of the said act. Thus, as on the relevant date, there was no prescription of period of limitation for preferring industrial disputes. It is not for the courts to prescribe any period of limitation. When the Act is silent as to the question of limitation, the courts are bound to entertain the cases, without looking into the belatedness or otherwise in filing the same, as it is the duty of the courts to interpret and implement the law enacted by the parliament only, but not to substitute or incorporate any new law. In the given circumstances, it is to be held that this petition is not barred by limitation.

This point is answered accordingly.



**9. Point No. 3 :**

The writs filed invoking the extraordinary jurisdiction of the Constitutional Courts provided under Article 226 of Constitution of India will never act as *res judicata* for the cases filed before the civil courts and tribunals which are clothed with ordinary jurisdiction by the various enactments. This tribunal is clothed with the ordinary jurisdiction to entertain industrial disputes. Whereas while preferring writs before Hon'ble High Court of A.P. the Petitioner has invoked extra ordinary jurisdiction provided under Article 226 of Constitution of India. Further more, Petitioner and others have withdrawn the special leave petition filed by them challenging the judgement dated 22.3.2001 rendered in the rendered by Hon'ble High Court of A.P. in WA No.1602/2000 only to raise an industrial dispute and said withdrawal has been accepted by Hon'ble Supreme Court of India, as can be seen in Ex.W3 the order rendered in Special Leave to Appeal(Civil) No.13451/2001.

10. Further more, the writ proceedings were launched by the Petitioner and other similarly placed persons seeking for regularisation of their services with the Respondent. Whereas, the present industrial dispute is raised by the Petitioner, consequent to termination of her services while the writ appeal was pending, seeking for setting aside the oral termination order dated 23.10.1998 of the Respondent, whereunder Petitioner's services were terminated consequently directing the Respondent to reinstate the Petitioner into service with attendant benefits. Therefore, cause of action for filing the writ proceeding and for raising the present industrial dispute and also nature of these two proceedings are totally different and distinct.

11. In the given circumstances, it can safely be held that the proceedings of WP No.29210/1998 will not act as *res judi cata* for the present proceedings.

This point is answered accordingly.

**12. Point No. 4 :**

Admittedly, Petitioner has worked with the Respondent organisation. It can be said so since, in their counter Respondent has not disputed regarding the fact that Petitioner has worked with them.

13. It is the contention of the Petitioner that she has been engaged by the Respondent for cleaning, sweeping, dusting, watching bend dumps, the work, nature of which is perennial and that the Petitioner was working directly under the control of the Respondent receiving salary directly from the Respondent but however, Respondent brought non-existing contractor between the Petitioner and Respondent to show that there is no master and servant relationship between them.

14. Whereas, Respondent is contending that house keeping works in DAE housing colony, in which the staff of the Respondent unit are housed, is being taken care of

by CAPRA municipality, whereas requirement of plant of the Respondent is being met through helpers(COS) deployed for the said purpose, however, prior to making this arrangements through CAPRA municipality and/or deployment of helpers(COS) a running contract for a period of 12 months was awarded for executing urgent works such as, jungle cutting in the NFC works as well as DAE Housing colony, where some contract labourers were engaged and that Petitioner is one among the labourers engaged by the contractor who was awarded with the work of cleaning of roads and storm water drains in housing colony.

15. From the above contention and counter contention of the Petitioner and Respondent, what one can gather is, that admittedly Petitioner has been working for the Respondent unit, and she was awarded with the work of cleaning of the premises, but it is the contention of the Respondent, contrary to the contentions of the Petitioner, that Petitioner has been a contract labourer engaged by the contractor to whom the cleaning work was entrusted by the Respondent but not a person directly engaged by the Respondent.

16. When once Respondent accepted the fact that Petitioner has worked with him but claimed that there is an intermediary between them i.e., a contractor, it is for the Respondent to establish before the court that there has been such contractor and the said contractor engaged the Petitioner for cleaning work entrusted to her by the Respondent. Further more, it is to be verified by the court, if it is established before the court that there has been such a contractor, whether the principal employer i.e., the Respondent was exercising control over the functioning of the Petitioner or whether through the contractor only the work was being done. Who is exercising control over the conditions of the service of the Petitioner is a crucial aspect to decide whether there is master and servant relationship between the principal employer and the workman or whether the alleged contractor himself remained as a master for the workman and other such relevant aspects. In this regard, it is well established legal principle that "the Industrial Tribunal/court will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere rule/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer." This is the legal principle laid down by the Hon'ble Supreme Court of India in the case of Steel Authority of India and ors. Vs. National Union Waterfront Workers and Others { (2001) 7 SCC page 1 }, which is relied upon by Learned Counsel for the Respondent himself.



17. All the above referred crucial aspects in this case can be gathered from the relevant record maintained by the Respondent in connection with the alleged contract entrusted to the contractor regarding the way in which the work was extracted from the Petitioner and other workers and also the mode of payment of wages to the Petitioner and other workmen and other related aspects. It is the burden of the Respondent to place all the relevant record before this tribunal. But the only record produced by the Respondent regarding the alleged contract is Ex.M4, the letter dated 30.9.97 said to have been issued by the Respondent to one Sri P. Ramana Reddy a contractor. There is no record to show that Respondent called for tenders for given contract work and selected any persons as contractors through any selection process. While she was under cross examination MW1 had admitted that they have not filed any document to show that contractor was engaged or agreement was entered between contractor and Management.

18. Further, in Ex.M4 it is averred that “A daily report indicating the details of labourers and vehicle engaged on the work for each day shall be submitted to the Engineer-in-charge, before 10.00 AM on every working day. Payment of wages to contract labourers shall be as per regulations laid down in CPWD contractors labour regulation to be applicable to Nuclear Fuel Complex. Intimation regarding wage period, date of payment, place and time of disbursement shall be given to the Engineer-in-charge within 2 (two) weeks from the date of issue of this order”. If the work was done in furtherance of Ex.M4 order, in every likelihood the daily report indicating details of labourers and vehicles engaged for the work, would have been submitted by the contractor to the Engineer-in-charge on every working day and further intimation regarding the wage period date of payment, place and time of disbursement of wages also would have been given to the Engineer-in-charge and such documents will be available with the Respondent. But no such documents are placed before the court which indicates that there are no such documents and therefore Ex.M4 has never been acted upon.

19. In the absence of proper proof of the fact that Petitioner has been a labourer worked under a contractor but not a direct employee of the Respondent, it is to be taken that she is the direct employee of the Respondent for the reason that it is an admitted fact that Petitioner worked for the Respondent as a sweeper. It can be taken that there is no proper proof of the contentions of the Respondent that Petitioner has been working under a contractor, for the above referred reason that Respondent failed to produce that all the relevant documents which will certainly will be in their custody, if actually Petitioner has been working under a contractor to whom the Respondent entrusted the cleaning of the premises as a contract work. Therefore, it can safely be held that

Respondent failed to establish that Petitioner has been working under a contractor who has been entrusted with the job of cleaning of their premises but not their direct employee.

20. In view of the foregone discussion it can safely be held that there is relationship of workman and Management between the Petitioner and the Respondent which indicates that there is master and servant relationship between them.

This point is answered accordingly.

**21. Point No. 5 :**

As can be gathered from the line of the defence taken in this case by the Respondent and the arguments built up and advanced for them, what one can see is that they are meeting the claim of the Petitioner, as if the Petitioner is seeking for regularization of services. But the fact remains that Petitioner is seeking for setting aside the order under which Petitioner's services were terminated and for reinstatement into service and other consequential reliefs. In the writ proceedings Petitioner sought for regularization of service but while writ appeal was pending disposal, as the Petitioner's services were terminated, this industrial dispute is raised seeking for setting aside the said termination order and consequential reinstatement of the Petitioner into service and for grant of other attendant benefits. Ignoring these aspects Respondent is advancing their arguments regarding the claim of the Petitioner in the writ proceedings for regularization of services. The said arguments are to be taken as not helpful for the proceedings of this case. The various legal precedents cited for the Respondent are also not helpful for furtherance of this case as they are all in respect of the regularization of the services of the contract employees. In this case, the relief sought for is not for regularization of service but it is for reinstatement into service. But in this case also the question whether Petitioner has been a contract labourer or other wise is to be decided and it has been decided while deciding Point No.4 alone.

22. Evidently, Respondent ceased to take services of the Petitioner since 23.10.1998. In their counter the Respondent has chosen to plead that the contractor has terminated the services of the Petitioner in the year 1998 but as discussed above while deciding point No.4 Respondent failed to establish that there has been a contractor as an intermediary between them and the Petitioner. Thus, it can safely be inferred that Respondent is the organization which terminated the services of the Petitioner.

23. It is claim of the Petitioner that said termination is by way of an oral order and therefore, it is not possible for the Petitioner to produce any termination order. But the fact remains that even as per contentions of the Respondent they ceased to take the services of the Petitioner since the year 1998. Therefore, it can reasonably

be accepted that there has been oral termination of the Petitioner with effect from 23.10.1998.

24. It is well established principle of law that every termination spells retrenchment. With this regard there is no dispute.

25. Sec.25F of the Industrial Disputes Act, 1947 deals with conditions precedent to retrenchment of workman. Sec.25 F reads as follows:-

“25-F: Conditions precedent to retrenchment of workmen:- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice.
- (b) The workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and
- (c) Notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the official Gazette].”

26. As can be gathered from the facts on record, Petitioner worked for one year continuously even as per the contentions of the Respondent, leaving alone the contentions of the Petitioner that she has been in continuous service with the Respondent since years together which has not been disproved by producing the record maintained by the Respondent regarding the service of the Petitioner with the Respondent. Therefore, it can safely be held that Petitioner comes under the purview of the workman mentioned in Sec.25F by working with the Respondent for not less than one year. As per Sec.25F such a workman can not be retrenched, until he has been given one month's notice in writing indicating the reasons for retrenchment and only after expiry of the period of notice or otherwise by making payment of wages in lieu of such notice for the period of notice. Further more, the workman has to be paid retrenchment compensation as mentioned in Sec.25F (b) and there shall be compliance of Sec.25F (c).

27. Unless there is compliance of all the above mentioned mandatory pre requisites the retrenchment of the workman is to be held as null and void, illegal and inoperative, as per the well established legal principles

laid down by Hon'ble the Apex Court. In the case of Devinder Singh Vs. Municipal Council, Sanaur, {(2011) 6 SCC page 584} and in the case of Anup Sharma Vs. Public Health Division [(2010) 5 SCC 497] Hon'ble Supreme Court of India considered the effect of violation of Sec.25F and held that termination of service of a workman without complying with the mandatory provisions contained under Sec.25F (A) and (B) should ordinarily result in his reinstatement.

28. In the present case, evidently there is no compliance of the mandatory pre-requisites contemplated under Sec.25F (a) and (b) of Industrial Disputes Act, 1947. Therefore, the impugned termination order is bad and is liable to be set aside and Petitioner is entitled for reinstatement into service.

This point is answered accordingly.

#### 29. Point No.6 :

In view of the findings given in Point No.5 above, the impugned oral termination order dated 23.10.1998 is liable to be set aside. Consequently Petitioner is entitled for reinstatement into service as Sweeper with continuity of service. Considering the way in which the Petitioner's services were terminated while the writ proceedings launched by the Petitioner seeking for regularization is pending, it can safely be held that Petitioner is entitled for all back wages, and all other attendant benefits.

This point is answered accordingly.

#### 30. Result :

In the result, petition is allowed. The oral order dated 23.10.1998 of the Respondent terminating the services of the Petitioner is hereby set aside. Petitioner shall be reinstated into service forthwith. Respondent shall pay back wages to the Petitioner for the period from 23.10.1998 the date of termination of her services till the date of the Petitioner's reinstatement into service. Petitioner is entitled for all other consequential benefits as well.

Award passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant corrected by me on this the 30<sup>th</sup> day of August, 2013.

M. VIJAYA LAKSHMI, Presiding Officer

#### Appendix of evidence

Witnesses examined for : Witnesses examined for  
the Petitioner the Respondent

WW1: Smt B. Jayamma MW1 : Smt. A. Rama Devi

#### Documents marked for the Petitioner

Ex.W1: Photostat copy of order in WPNo.29210/1998  
dt.25.9.2000

Ex.W2: Photostat copy of representation dt.11.4.98

- Ex.W3: Photostat copy of order in SLA (Civil) Np.13451/2001
- Ex.W4: Photostat copy of representation dt.3.5.96
- Ex.W5: Photostat copy of provisional receipt from Kapra Municipality dt.13.11.98
- Ex.W6: Photostat copy of representation dt.9.10.98
- Ex.W7: Photostat copy of order in WA No.1602/1999
- Ex.W8: Photostat copy of representation dt. 24.10.2005

**Documents marked for the Respondent**

- Ex.M1: Photostat copy of order in WP No.5592/1991
- Ex.M2: Photostat copy of receipt from Kapra Municipality dt.13.11.98
- Ex.M3: Photostat copy of letter dt.9.1.1999 issued by NFC to Commissioner, Kapra Municipality.
- Ex.M4: Photostat copy of letter dt. 30.9.97 issued by NFC to Sri P. Ramana Reddy, Contractor
- Ex.M5: Photostat copy of order in contempt case No.1903/98
- Ex.M6: Photostat copy of order in WPN0.29210/1998 dt.25.9.2000
- Ex.M7: Photostat copy of order in WA No.1602/1999
- Ex.M8: Photostat copy of receipt from Kapra Municipality dt.1.1.1999.

नई दिल्ली, 17 जनवरी, 2014

**का.आ. 451.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार चीफ एग्जीक्यूटिव नुक्लेअर फ्यूल काम्प्लेक्स डिपार्टमेंट ऑफ एटॉमिक एनर्जी हैदराबाद के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 62/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-1-2014 को प्राप्त हुआ था।

[सं. एल-42012/03/2014-आई आर (डीयू)]  
पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 17th January, 2014

**S.O. 451.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 62/2006) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the Management of Chief Executive, Nuclear Fuel Complex, Department of Atomic Energy, Hyderabad and their workman, which was received by the Central Government on 13-1-2014.

[No. L-42012/03/2014-IR (DU)]  
P. K. VENUGOPAL, Section Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL- CUM- LABOUR COURT  
AT HYDERABAD**

**Present :** Smt. M. VIJAYA LAKSHMI, Presiding Officer

Dated the 30<sup>th</sup> day of August, 2013

**INDUSTRIAL DISPUTE L.C. No. 62/2006**

**Between :**

Smt. K. Vijaya W/o K. Rajender,  
R/o H.No. A-10/2,  
D.A.E. Colony, ECIL(P),  
Hyderabad-62

....Petitioner

AND

Chief Executive,  
Nuclear Fuel Complex,  
Department of Atomic Energy,  
Hyderabad – 500 062

....Respondent

**Appearances :**

For the Petitioner : M/s. G. Ravi Mohan, G. Narersh  
Kumar, Vikas Sharma, K. Bhaskar  
& G. Pavan Kumar, Advocates

For the Respondent: Sri K. Suryanarayana, Advocate

**AWARD**

This is a petition filed invoking Sec.2A(2) of Industrial Disputes Act, 1947 by the Petitioner who is claiming to be the person who worked as sweeper in the Respondent unit seeking for setting aside the oral termination of services dated 23.10.1998 by the Respondent consequently to direct the Respondent to reinstate the Petitioner into service with continuity of service, back wages and all other attendant benefits.

**2. The averments made in the petition in brief are as follows:**

Petitioner worked as Sweeper in the Respondent unit along with other similarly situated persons. Petitioner was engaged for cleaning, sweeping, dusting, watching of bend dumps. This work is perennial nature. Petitioner was working directly under the control of the Respondent and the salary of the Petitioner is being paid directly by the Respondent. However, Respondent brought non-existing contractor between the Petitioner and the Respondent, to show that there is no master and servant relationship between them. The Central Government, exercising the power under Sec.10 of Abolition of Contract Labour Act on the basis of the recommendations and in conciliation with the Central Advisory Board constituted under Sec.10 (1) of the said act issued notification dated 9.12.1976 prohibiting employment of contract labourers in respect of cleaning sweeping, dusting and watching of the building owned by or occupied by the establishment

in respect of which the appropriate government under the said act is the Central Government. Petitioner's job is cleaning and sweeping. Once engaging contract labourers for said job is abolished, there is an obligation for the Respondent to consider regularising the Petitioner and similarly placed persons basing on the availability of vacancies. Even as per the mandate of the Apex Court it is the statutory obligation of the Principal Employer to absorb the contract labourer once the contract labour is abolished and to treat them as regular employees. It is the statutory obligation under Sections 11, 19 and 20 of the Factories Act to maintain cleanliness of the area in which the factory is situated. Respondent company is a factory. Even as per the condition contained in format of the license under Contract Labour Regulation and Abolition Act, Petitioner is entitled for regular pay of the minimum wages prescribed by the Government. Initially Petitioner was paid Rs.25/- per day. Subsequently it was enhanced to Rs. 45/- per day. Petitioner worked from May, 1992 to October, 1998 continuously without any break in service. Petitioner along with other similarly situated persons filed WP No.29210 of 1998 before the Hon'ble High Court of A.P. for absorbing as a regular employee and to pay other benefits on par with other employees. During the pendency of the said Writ petition, Petitioner was terminated from the service in the month of October, 1998 and the writ petition was allowed by an order dated 25.9.2000. Against the said order WA No. 1602/1999 was filed by the Respondent before the Division Bench of the Hon'ble High Court of A.P. The said appeal was allowed on 23.2.2001. Against the said order Petitioner filed Special Leave to Appeal (Civil) No.13451/2001 before the Hon'ble Supreme Court of India and the same was withdrawn with a liberty to raise industrial dispute before the appropriate forum on 9.11.2001. Thus, the Petitioner raised the dispute. The premises of the Respondent including the residential quarters of the officers of the Respondent is in the same campus, i.e., within the premises of the Respondent. Cleaning activities of the Respondent quarters which includes, roads and maintenance of the buildings is to be taken care off by the Respondents only. An officer from the civil department used to take care of the work in respect of cleaning and maintenance of the factory buildings including the residential quarters. No work was entrusted to any outsider at any point of time i.e., contractor. Respondent used to maintain details of casual labourers, who were entrusted with the works of cleaning, gardening, civil works etc., which are perennial in nature. Petitioner was deputed to work as sweeper. Respondent never issued any appointment letter. However, salary was being paid by the Respondent Management on monthly basis. Attendance register and wages register were maintained by the Respondent and the same are in their custody. Respondent used to take the signature of the Petitioner in the wage register every month while paying salary in cash. There was no contract

given to any contractor who is in between Respondent and Petitioner. In view of the notification issued by the Central Government. Respondent should not engage any contract labour. Admittedly, Petitioner is an uneducated woman and she has been exploited by the Respondent by paying less than minimum wages and terminating her services abruptly without any notice consequent to her filing WP before the Hon'ble High Court of A.P. and without following the procedure contemplated under Industrial Disputes Act, 1947 as well as Contract Labour Regulation and Abolition Act. There is violation of the provisions of Sec.25F of Industrial Disputes Act, 1947. Petitioner is the only earning member of her family and consequent to illegal termination of her services it has become difficult to eak out livelihood of her family.

### **3. Respondent filed his counter with the averments in brief as follows:**

Petitioner is supposed to approach Hon'ble Central Administrative Tribunal. Which has the requisite jurisdiction over the service matters as held by the Hon'ble Supreme Court of India in the case of Chandra Kumar Vs. Union of India and in view of the direction given in WP No.5592 of 1991 filed by Sri Kewal Singh and 17 others vide order dated 22.4.1991. Petitioner's claim is barred by limitation as services of the Petitioner said to have been terminated way back in 1995 as the contract entered into with Sri P. Narasimha, the contractor, Respondent No.2 in WP No.29210/1998 expired by 30.6.1995. On this ground also petition is not maintainable. The Nuclear Fuel Complex has constructed manufacturing plants and administrative buildings with separate enclosures and the ingress and egress of this premises is guarded by Central Industrial Security Force of Ministry of Home Affairs. In so far as housing colony spreading in an area of 260 acres is concerned, watch and ward is taken care of by a security agency. Without any restriction for the entry in the colony by the general public for the purpose of visit the residents of the colony. The over all control including allotment of quarters vests with the Estate Officer, NFC. It is necessary to pay taxes which include service charges in respect of the said colony and it has termed within the jurisdiction of the KAPRA municipality. Since service charges running into lakhs of rupees have been paid to Kapra Municipality which facilitated the Respondent approaching them for taking up the house keeping jobs in DAE colony. The house keeping works of DAE housing colony is being taken care of by Kapra municipality. The requirement is being met through helpers deployed by such persons. Making such arrangements on the deployment of helpers a running contract for a period of 12 months executing urgent works such as jungle cutting in the sprawling Nuclear Fuel Complex, cleaning of storm water drains and clearance of garbage on roads vide letter dated 30.9.1997. Similar contract was in existence in DAE housing



colony where some contract labourers were also engaged. Petitioner is one among the labourers engaged by the contractor who was awarded the work of cleaning of roads and storm water drains in housing colony. Her engagement is not within the knowledge and control of the Respondent at any time. It was outside the scope of the notification dated 9.12.1976 issued by the Central Government. There was no scope for direct payment by the Respondent to the Petitioner at any point of time. Petitioner filed WP No.29210 of 1998 seeking for regularization of her services along with others. By virtue of order dated 22.10.1998 in WPMP 35709 of 1998 Hon'ble High Court of A.P. was pleased to direct that the position shall be maintained till further orders if the Petitioners were in service as on that date. Ultimately by virtue of order dated in WP 29210 of 1998 regularization of the services of the Petitioner among others was ordered. Respondents preferred WA No.1602/2000 which was allowed vide order dated 22.3.2001. Whereunder, the impugned judgement dated 25.9.2000 in WP No.29210 of 1998 has been set aside. Having maintained silence for a period of more than 5 years Petitioner approached this Tribunal now. It is a belated claim. Statement of the Petitioner that the work done by her was perennial in nature was denied. It was a stop gap arrangement prior to approach the Municipal Authorities of Kapra for taking assistants. Petitioner never worked directly under the control of the Respondent and salary paid to her by the Respondent is outrightly denied. The engagement of the Petitioner by a contractor was outside the scope of notification dated 9.12.1976 issued by the Central Government under Contract Labour (R & A) Act, 1970. Petitioner's employer was not having any contractual obligation with her as on the date of issuance of the notification dated 9.12.1976. As per the mandate of Hon'ble Apex Court only those contract labourers who were working at the time of issuance of the said notification could be directed to be absorbed in the establishment of the Principal Employer. Petitioner was not a casual labourer on the rolls of the Respondent. Even otherwise as per the mandate of Hon'ble Apex Court casual labourers employed on temporary works are not entitled for regularization for absorption as it amounts to back door entries into service on the basis of completion of 240 days of work and the appointment to the service has to be made in accordance with the statutory rules and guidelines thereunder. Contract labourers are not entitled to the same pay scales as of the regular employees. The residential quarters are not within factory premises. Petitioner never directly engaged by the Respondent and she was never exploited. Petitioner rendered service as a contract labourer with a contractor. She can not claim for regularization of her services. In the writ proceedings for the similar cause of action, litigation was launched seeking for same relief in this proceedings is hit by res judi cata. Petition is liable to be dismissed.

4. To substantiate the contentions of the Petitioner WW1 was examined and Exhibits W1 to W8 are marked. On behalf of the Respondent MW1 was examined and Exhibits M1 to M8 are marked.

5. Heard the arguments of either party and written arguments of either party are also filed and they are considered.

**6. The points that arise for determination are:**

1. Whether this dispute is not maintainable before this tribunal for want of jurisdiction?
2. Whether this dispute is barred by limitation?
3. Whether the proceedings in writ petition No.29210 of 1998 operate as res judi cata?
4. Whether there is no relationship of workman and Management between the Petitioner and Respondent?
5. Whether there is termination of the service of the Petitioner by the Respondent through oral termination order dated 23.10.1998? If so, whether the said order is liable to be set aside?
6. To what relief Petitioner is entitled?

**7. Point No. 1:**

There is no dispute as to the fact that Petitioner is a workman and Respondent is an industry. But, Respondent is contending that this tribunal can not entertain this case for the reason, that as held in the case of Sri Chandra Kumar vs. Union Of India (AIR 1997 SC 1125) Petitioner is supposed to have his legal recourse from the Central Administrative Tribunal. This contention can not be accepted as a correct contention. It is undoubtedly an industrial dispute and the Respondent is admittedly a Central Government Organisation. This forum is Central Government Industrial Tribunal cum Labour Court whose function is to decide the industrial disputes arising from the industries which are Central Government undertakings. All the industrial disputes which arose within the jurisdiction of this tribunal and which concern with the Central Government organisations Central Government undertakings, are to be decided by this forum only as per the powers conferred on this tribunal. As to the Central Administrative Tribunal is concerned, all the service and administration related disputes pertaining to the officers and employees of all the Central Government offices, organisations and undertakings are to be dealt with by the said forum. Since the present dispute is an industrial dispute raised under Sec.2A(2) of Industrial Disputes Act, 1947, this tribunal got every jurisdiction to entertain this dispute.

This point is answered accordingly.

#### 8. Point No. 2 :

It is the contention of the Respondent that present dispute is barred by limitation for the reason that Petitioner filed this petition five years after the Hon'ble High Court of A.P. decided WA No.1602/2000 in WP No.29210/1998 by virtue of judgement dated 22.3.2001. In this regard, it can clearly be seen that there is no consonance between the writ proceedings and filing of this industrial dispute before this court. Further more, as on the date of filing of the present petition, no limitation was prescribed for preferring industrial disputes in the Industrial Disputes Act, 1947. Only recently i.e., in the year 2010 limitation has been prescribed for preferring industrial disputes invoking Sec.2A(2) of Industrial Disputes Act, 1947 by enacting Sec.2A(3) of the said act. Thus, as on the relevant date, there was no prescription of period of limitation for preferring industrial disputes. It is not for the courts to prescribe any period of limitation. When the Act is silent as to the question of limitation, the courts are bound to entertain the cases, without looking into the belatedness or otherwise in filing the same, as it is the duty of the courts to interpret and implement the law enacted by the parliament only, but not to substitute or incorporate any new law. In the given circumstances, it is to be held that this petition is not barred by limitation.

This point is answered accordingly.

#### 9. Point No. 3 :

The writs filed invoking the extraordinary jurisdiction of the Constitutional Courts provided under Article 226 of Constitution of India will never act as res judicata for the cases filed before the civil courts and tribunals which are clothed with ordinary jurisdiction by the various enactments. This tribunal is clothed with the ordinary jurisdiction to entertain industrial disputes. Whereas while preferring writs before Hon'ble High Court of A.P. the Petitioner has invoked extra ordinary jurisdiction provided under Article 226 of Constitution of India. Further more, Petitioner and others have withdrawn the special leave petition filed by them challenging the judgement dated 22.3.2001 rendered in the rendered by Hon'ble High Court of A.P. in WA No.1602/2000 only to raise an industrial dispute and said withdrawal has been accepted by Hon'ble Supreme Court of India, as can be seen in Ex.W3 the order rendered in Special Leave to Appeal(Civil) No.13451/2001.

10. Further more, the writ proceedings were launched by the Petitioner and other similarly placed persons seeking for regularisation of their services with the Respondent. Whereas, the present industrial dispute is raised by the Petitioner, consequent to termination of her services while the writ appeal was pending, seeking for setting aside the oral termination order dated 23.10.1998 of the Respondent, whereunder Petitioner's services were terminated consequently directing the Respondent to

reinstate the Petitioner into service with attendant benefits. Therefore, cause of action for filing the writ proceeding and for raising the present industrial dispute and also nature of these two proceedings are totally different and distinct.

11. In the given circumstances, it can safely be held that the proceedings of WP No.29210/1998 will not act as res judi cata for the present proceedings.

This point is answered accordingly.

#### 12. Point No. 4 :

Admittedly, Petitioner has worked with the Respondent organisation. It can be said so since, in their counter Respondent has not disputed regarding the fact that Petitioner has worked with them.

13. It is the contention of the Petitioner that she has been engaged by the Respondent for cleaning, sweeping, dusting, watching bend dumps, the work, nature of which is perennial and that the Petitioner was working directly under the control of the Respondent receiving salary directly from the Respondent but however, Respondent brought non-existing contractor between the Petitioner and Respondent to show that there is no master and servant relationship between them.

14. Whereas, Respondent is contending that house keeping works in DAE housing colony, in which the staff of the Respondent unit are housed, is being taken care of by CAPRA municipality, whereas requirement of plant of the Respondent is being met through helpers(COS) deployed for the said purpose, however, prior to making this arrangements through CAPRA municipality and / or deployment of helpers(COS) a running contract for a period of 12 months was awarded for executing urgent works such as, jungle cutting in the NFC works as well as DAE Housing colony, where some contract labourers were engaged and that Petitioner is one among the labourers engaged by the contractor who was awarded with the work of cleaning of roads and storm water drains in housing colony.

15. From the above contention and counter contention of the Petitioner and Respondent, what one can gather is, that admittedly Petitioner has been working for the Respondent unit, and she was awarded with the work of cleaning of the premises, but it is the contention of the Respondent, contrary to the contentions of the Petitioner, that Petitioner has been a contract labourer engaged by the contractor to whom the cleaning work was entrusted by the Respondent but not a person directly engaged by the Respondent.

16. When once Respondent accepted the fact that Petitioner has worked with him but claimed that there is an intermediary between them i.e., a contractor, it is for the Respondent to establish before the court that there has been such contractor and the said contractor engaged the

Petitioner for cleaning work entrusted to her by the Respondent. Further more, it is to be verified by the court, if it is established before the court that there has been such a contractor, whether the principal employer i.e., the Respondent was exercising control over the functioning of the Petitioner or whether through the contractor only the work was being done. Who is exercising control over the conditions of the service of the Petitioner is a crucial aspect to decide whether there is master and servant relationship between the principal employer and the workman or whether the alleged contractor himself remained as a master for the workman and other such relevant aspects. In this regard, it is well established legal principle that “the Industrial Tribunal/court will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere rule/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer.” This is the legal principle laid down by the Hon'ble Supreme Court of India in the case of Steel Authority of India and ors. Vs. National Union Waterfront Workers and Others { (2001) 7 SCC page 1 }, which is relied upon by Learned Counsel for the Respondent himself.

17. All the above referred crucial aspects in this case can be gathered from the relevant record maintained by the Respondent in connection with the alleged contract entrusted to the contractor regarding the way in which the work was extracted from the Petitioner and other workers and also the mode of payment of wages to the Petitioner and other workmen and other related aspects. It is the burden of the Respondent to place all the relevant record before this tribunal. But the only record produced by the Respondent regarding the alleged contract is Ex.M4, the letter dated 30.9.97 said to have been issued by the Respondent to one Sri P. Ramana Reddy a contractor. There is no record to show that Respondent called for tenders for given contract work and selected any persons as contractors through any selection process. While she was under cross examination MW1 had admitted that they have not filed any document to show that contractor was engaged or agreement was entered between contractor and Management.

18. Further, in Ex.M4 it is averred that “A daily report indicating the details of labourers and vehicle engaged on the work for each day shall be submitted to the Engineer-in-charge, before 10.00 AM on every working day. Payment of wages to contract labourers shall be as per regulations laid down in CPWD contractors labour regulation to be applicable to Nuclear Fuel Complex. Intimation regarding wage period, date of payment, place

and time of disbursement shall be given to the Engineer-in-charge within 2 (two) weeks from the date of issue of this order”. If the work was done in furtherance of Ex.M4 order, in every likelihood the daily report indicating details of labourers and vehicles engaged for the work, would have been submitted by the contractor to the Engineer-in-charge on every working day and further intimation regarding the wage period date of payment, place and time of disbursement of wages also would have been given to the Engineer-in-charge and such documents will be available with the Respondent. But no such documents are placed before the court which indicates that there are no such documents and therefore Ex.M4 has never been acted upon.

19. In the absence of proper proof of the fact that Petitioner has been a labourer worked under a contractor but not a direct employee of the Respondent, it is to be taken that she is the direct employee of the Respondent for the reason that it is an admitted fact that Petitioner worked for the Respondent as a sweeper. It can be taken that there is no proper proof of the contentions of the Respondent that Petitioner has been working under a contractor, for the above referred reason that Respondent failed to produce that all the relevant documents which will certainly will be in their custody, if actually Petitioner has been working under a contractor to whom the Respondent entrusted the cleaning of the premises as a contract work. Therefore, it can safely be held that Respondent failed to establish that Petitioner has been working under a contractor who has been entrusted with the job of cleaning of their premises but not their direct employee.

20. In view of the foregone discussion it can safely be held that there is relationship of workman and Management between the Petitioner and the Respondent which indicates that there is master and servant relationship between them.

This point is answered accordingly.

**21. Point No. 5 :**

As can be gathered from the line of the defence taken in this case by the Respondent and the arguments built up and advanced for them, what one can see is that they are meeting the claim of the Petitioner, as if the Petitioner is seeking for regularization of services. But the fact remains that Petitioner is seeking for setting aside the order under which Petitioner's services were terminated and for reinstatement into service and other consequential reliefs. In the writ proceedings Petitioner sought for regularization of service but while writ appeal was pending disposal, as the Petitioner's services were terminated, this industrial dispute is raised seeking for setting aside the said termination order and consequential reinstatement of the Petitioner into service and for grant of other attendant benefits. Ignoring these aspects Respondent is advancing their arguments regarding the claim of the Petitioner in the



writ proceedings for regularization of services. The said arguments are to be taken as not helpful for the proceedings of this case. The various legal precedents cited for the Respondent are also not helpful for furtherance of this case as they are all in respect of the regularization of the services of the contract employees. In this case, the relief sought for is not for regularization of service but it is for reinstatement into service. But in this case also the question whether Petitioner has been a contract labourer or otherwise is to be decided and it has been decided while deciding Point No.4 alone.

22. Evidently, Respondent ceased to take services of the Petitioner since 23.10.1998. In their counter the Respondent has chosen to plead that the contractor has terminated the services of the Petitioner in the year 1998 but as discussed above while deciding point No.4 Respondent failed to establish that there has been a contractor as an intermediary between them and the Petitioner. Thus, it can safely be inferred that Respondent is the organization which terminated the services of the Petitioner.

23. It is claim of the Petitioner that said termination is by way of an oral order and therefore, it is not possible for the Petitioner to produce any termination order. But the fact remains that even as per contentions of the Respondent they ceased to take the services of the Petitioner since the year 1998. Therefore, it can reasonably be accepted that there has been oral termination of the Petitioner with effect from 23.10.1998.

24. It is well established principle of law that every termination spells retrenchment. With this regard there is no dispute.

25. Sec.25F of the Industrial Disputes Act, 1947 deals with conditions precedent to retrenchment of workman. Sec.25 F reads as follows:-

“25-F: Conditions precedent to retrenchment of workmen:- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice.
- (b) The workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and
- (c) Notice in the prescribed manner is served on the appropriate Government [or such

authority as may be specified by the appropriate Government by notification in the Official Gazette].”

26. As can be gathered from the facts on record, Petitioner worked for one year continuously even as per the contentions of the Respondent, leaving alone the contentions of the Petitioner that she has been in continuous service with the Respondent since years together which has not been disproved by producing the record maintained by the Respondent regarding the service of the Petitioner with the Respondent. Therefore, it can safely be held that Petitioner comes under the purview of the workman mentioned in Sec. 25F by working with the Respondent for not less than one year. As per Sec. 25F such a workman can not be retrenched, until he has been given one month's notice in writing indicating the reasons for retrenchment and only after expiry of the period of notice or otherwise by making payment of wages in lieu of such notice for the period of notice. Further more, the workman has to be paid retrenchment compensation as mentioned in Sec. 25F (b) and there shall be compliance of Sec. 25F (c).

27. Unless there is compliance of all the above mentioned mandatory pre-requisites the retrenchment of the workman is to be held as null and void, illegal and inoperative, as per the well established legal principles laid down by Hon'ble the Apex Court. In the case of Devinder Singh Vs. Municipal Council, Sanaur, [(2011) 6 SCC page 584] and in the case of Anup Sharma Vs. Public Health Division [(2010) 5 SCC 497] Hon'ble Supreme Court of India considered the effect of violation of Sec.25F and held that termination of service of a workman without complying with the mandatory provisions contained under Sec. 25F (A) and (B) should ordinarily result in his reinstatement.

28. In the present case, evidently there is no compliance of the mandatory pre-requisites contemplated under Sec.25F (a) and (b) of Industrial Disputes Act, 1947. Therefore, the impugned termination order is bad and is liable to be set aside and Petitioner is entitled for reinstatement into service.

This point is answered accordingly.

#### 29. Point No. 6 :

In view of the findings given in Point No.5 above, the impugned oral termination order dated 23.10.1998 is liable to be set aside. Consequently Petitioner is entitled for reinstatement into service as Sweeper with continuity of service. Considering the way in which the Petitioner's services were terminated while the writ proceedings launched by the Petitioner seeking for regularization is pending, it can safely be held that Petitioner is entitled for all back wages, and all other attendant benefits.

This point is answered accordingly.



**30. Result :**

In the result, petition is allowed. The oral order dated 23.10.1998 of the Respondent terminating the services of the Petitioner is hereby set aside. Petitioner shall be reinstated into service forthwith. Respondent shall pay back wages to the Petitioner for the period from 23.10.1998 the date of termination of her services till the date of the Petitioner's reinstatement into service. Petitioner is entitled for all other consequential benefits as well.

Award passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant corrected by me on this the 30<sup>th</sup> day of August, 2013.

M. VIJAYA LAKSHMI, Presiding Officer

**Appendix of evidence**

|  |  |
|--|--|
| Witnesses examined for<br>the Petitioner | Witnesses examined for<br>the Respondent |
| WW1: Smt. K. Vijaya                      | MW1 : Smt. A. Rama Devi                  |

**Documents marked for the Petitioner**

Ex.W1 : Photostat copy of order in WPN0.29210/1998 dt.25.9.2000  
 Ex.W2 : Photostat copy of representation dt.11.4.98  
 Ex.W3 : Photostat copy of order in SLA (Civil) Np.13451/2001  
 Ex.W4 : Photostat copy of representation dt.3.5.96  
 Ex.W5 : Photostat copy of provisional receipt from Kapra Municipality dt.13.11.98  
 Ex.W6 : Photostat copy of representation dt.9.10.98  
 Ex.W7 : Photostat copy of order in WA No.1602/1999  
 Ex.W8 : Photostat copy of representation dt. 24.10.2005

**Documents marked for the Respondent**

Ex.M1 : Photostat copy of order in WP No.5592/1991  
 Ex.M2 : Photostat copy of receipt from Kapra Municipality dt.13.11.98  
 Ex.M3 : Photostat copy of letter dt.9.1.1999 issued by NFC to Commissioner, Kapra Municipality.  
 Ex.M4 : Photostat copy of letter dt. 30.9.97 issued by NFC to Sri P. Ramana Reddy, Contractor  
 Ex.M5 : Photostat copy of order in contempt case No.1903/98  
 Ex.M6 : Photostat copy of order in WPN0.29210/1998 dt.25.9.2000  
 Ex.M7 : Photostat copy of order in WA No.1602/1999  
 Ex.M8 : Photostat copy of receipt from Kapra Municipality dt.1.1.1999.

नई दिल्ली, 20 जनवरी, 2014

**का.आ. 452.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.-2, धनबाद के पंचाट (संदर्भ संख्या 53 का 2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-1-2014 को प्राप्त हुआ था।

[सं. एल-20012/460/2000-आई आर (सी-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 20th January, 2014

**S.O. 452.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 53/2001) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the Industrial Dispute between the Management of M/s. BCCL and their workman, received by the Central Government on 20-1-2014.

[No. L-20012/460/2000-IR (C-I)]

M. K. SINGH, Section Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD**

**PRESENT :** Shri Kishori Ram, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947.

**REFERENCE NO 53 OF 2001****PARTIES :**

The Secretary,  
United Coal Workers' Union,  
Gandhi Road, Dhanbad

Vs.

The Chief General Manager,  
Sijua Area of M/s. BCCL,  
PO : Sijua, Dhanbad

**APPEARANCES :**

On behalf of the : Mr. D. Mukherjee, Ld. Advocate  
workman/Union

On behalf of the : Late H. Nath, Ld. Advocate  
Management

State : Jharkhand

Industry: Coal

Dated, Dhanbad, the 12th November, 2013

**AWARD**

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec. 10(1)(d) of the I.D. Act, 1947 has referred the following

dispute to this Tribunal for adjudication vide their Order No. L-20012/460/2000(C-I) dt. 19.2.2001.

### SCHEDULE

“Whether the demand of the union to provide employment on compassionate ground to Sri Krishnamurari Singh, dependent son of Late Baijnath Singh, Ex-Night Guard as per provision of 9.4.2. of NCWA-IV is proper and justified? If so, to what relief is the said dependent entitled?.

2. The case of sponsoring union Coal Workers Union for petitioner Krishnamurari Singh is that late Baijnath Singh, father of the petitioner, was a permanent Night Guard working since long at Nichitpur Colliery, but unfortunately the workman died on 26.12.1990, during the tenure of his service, and his wife had also died. The petitioner, the only dependent son of the workman, had represented to the management for providing him an employment as per provision of the NCWA, following the death of his father workman. At that time, the petitioner was not 18 years old, so the management informed his name having been kept in Live Roster, advising him to wait for until his becoming a major of that age. But instead of providing him an employment, the Management turned down his employment on the ground of its unapproval of the Head Quarter. At last the Industrial Dispute raised by the Union before the Conciliation Officer, but its failure resulted in the reference for an adjudication. The demand of the union for providing an employment on compassionate ground to the petitioner is proper and justified, but its denial by the management is illegal and unjustified.

The Union in its rejoinder has categorically denied the allegations of the OP/management, and stated that Baijnath Singh was a permanent employee as Night Guard who died on 26.12.1990 during the tenure of his service, but the Management belatedly informed the concerned person of the rejection of his claim.

3. Whereas the contra pleaded case of the OP/Management is that Late Baijnath Singh, Ex-Night Guard was a permanent employee at Nichitpur Colliery. He died on 26.12.90; on his death, his dependent son Krishnamurari Singh submitted an employment Form for his employment. It was sent to the Head Quarter, Koyla Bhawan. His case was considered, but the competent Authority regretted the same and it was informed to the petitioner as per the G.M.'s Letter No.569 dt.21.2.1998 of the Koyla Bhawan. The action of the Management in not providing employment to Krishnamurari Singh as per provisions of clause 9.4.2. of NCWA-IV is proper and justified. The petitioner is not entitled to any relief.

### FINDING WITH REASONS

4. In the instant reference, WWI Krishnamurari Singh, the petitioner himself for the Union, has been

examined, but not a single witness has been examined on behalf of the OP/Management despite ample opportunity.

Mr. D.Mukherjee, the Learned Counsel for the Union/the petitioner submits that Late workman Baijnath Singh, the father of the petitioner, was the Night Guard at Nichitpur Colliery who died in harness on 26.12.1990 (photocopy of his death Certificate-Ext.W.1) and at the relevant time petitioner Krishna Murari Singh who was 15 years old as per the copy of his Father's Service Excerpt (Ext.W.2), had made two representations (dt. 29.4.91 and 01.06.1996, the photocopies thereof-Extt.W.3 and 3/1 respectively) to the Management for his employment. But the Management refused his employment on compassionate ground. Relying upon the decision of the Hon'ble Supreme Court reported in 2007(115)FLR 427, Mohan Mahato Vs. CC Ltd., Mr.Mukherjee submits, as held therein, that the management is statutorily bound to provide the dependent an employment, as in Coal Industry dependent employment is provided as per the provision of the NCWA which is Settlement, and that the Public / Sector undertaking such as CCL, BCCL is a state within the meaning of Art.12, so is under a constitutional obligation to act fairly, reasonably and bonafide. It is also submitted as per his written argument on his behalf that same view has been reiterated by the Hon'ble High Court, Jharkhand, in the cases of Basmatia Devi Vs., CCL and Lakhjma Kumar Vs.CCL reported in JLJR 2006(2) 464 and JLJR2005(3) 190 respectively. According to Mr.Mukherjee, Ld.Counsel for the union the petitioner is entitled to his employment on compassionate ground.

5. In fact, every of the NCWAs is an Agreement/Settlement between the members of the concerned Industrial Organizations and those of recognized Labour Unions INMWF(INTUC) & Ors concerned for the specific terms and conditions laid down for the wages, various specified reliefs including the Social Security of the workmen for specified period of time whenever required for their interest. In the instant case, the death of Late workman Jai Nath Singh in harness on 26.12.1990 is an acknowledged fact, so the NCWA IV enforced w.e.f. 1.1.1987 to 30. 06.1991 as evident from the preamble to NCWA-V appears to be applicable to the case of the petitioner dependent son of Workman. In clause 9.4.02 with heading Employment of one dependent of the workers who dies while in service under Social Security Chapter-IX reads as under:

- (i) The dependent for this purpose means the wife/husband as the case may be, unmarried daughter, son legally adopted son... wholly dependent on the earning of the deceased may be considered to be the dependents of the deceased,
- (ii) The dependents to be considered for employment should be physically fit and

suitable for employment and aged not more than 35 years provided that the age limit shall not apply in the case of spouse.

In the instant case, the minority of the petitioner at the relevant time of his father's death or of his aforesaid two representations to the O.P./Management for his employment is indisputable. The provision under the clause 9.4.02 (ii) of the NCWAIV the requisite qualification for employment on compassionate ground seeks that "dependent should be physically fit and suitable for employment, and aged not beyond 35 years. Its implied conditions involve that the dependent should not be a minor, rather be legally a major for such employment at the relevant time. It is also significant to note that the said provision nowhere bars to the dependent of the workman dying in harness from making an application to the O.P./Management for his compassionate employment in view of the extensive period, i.e., "aged not more than 35 years" as laid down in the provision of the NCWA -IV. It is remarkable to signify that each NCWA has its existence for its specified period.

In result, it is hereby responded to the Reference, and accordingly,

#### ORDERED

The Award be and the same is passed that the demand of the Union to provide employment on compassionate ground to Sri Krishnamurari Singh, dependent son of Late Baijnath Singh, Ex-Night Guard as per provision of 9.4.2. of the NCWA-IV is/was not proper and justified on account of minority of the petitioner. In that aspect he was not entitled to it. However, in view of the nature of the said provision, the afresh application of the petitioner for his employment may be considerable by the O.P./Management, but subject to the said provision only. The Management may be directed to consider it, provided afresh application is made in the prescribed Form by the petitioner who is not beyond 35 years of his age.

KISHORI RAM, Presiding Officer

नई दिल्ली, 20 जनवरी, 2014

**का.आ. 453.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी सी सी एल के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 148 का 2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-01-2014 को प्राप्त हुआ था।

[सं. एल. 20012/35/2001-आईआर (सी-I)]

एम.के. सिंह, अनुभाग अधिकारी

New Delhi, the 20th January, 2014

**S.O. 453.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 148/2001) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s BCCL and their workmen, received by the Central Government on 20-01-2014.

[No. L-20012/35/2001-IR (C-I)]

M. K. SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD PRESENT

Shri Kishori Ram, Presiding Officer.

In the matter of an Industrial Dispute under Section 10 (1) (d) of the I.D. Act, 1947.

#### Reference No 148 of 2001.

Parties : The Secretary,  
Rashtriya Colliery Mazdoor  
Sangh, Rajendre Path,  
Dhanbad,  
Vs.  
Project Officer, Tetulmari  
Colliery under Sijua area of  
M/s BCCL

#### Appearances :

On behalf of the work- : None  
man/Union  
On behalf of the : Mr. D. K. Verma, Ld. advocate  
Management  
State : Jharkhand Industry : Coal

Dated, Dhanbad the 13th Nov., 2013.

#### AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec. 10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/35/2001-IR (C-I) dt. 30-04-2001.

#### SCHEDULE

"Whether the action of the management of Tetulmari Colliery under Bharat Coking Coal India in not regularizing the services of Shri Hardwar Rai, Pump operator as Dhowrah Supervisor is proper and justified. If not, to what relief the workman is entitled to and from which date."

2. Neither any Representative for the Rashtriya Colliery Mazdoor Sangh, Dhanbad, nor workman Hardwar Rai appeared nor any witness of the workman produced despite ample opportunities for it. Mr. D. K. Verma, the Ld. Counsel for the O. P./ Management is present.

On perusal of the case record, it is clear that the case has been pending for the evidence of workman since 12-4-2005, for which Regd. Notices 27th May and 25th July, 2013 have been issued to the Secretary of the Union. The Union Representative and the workman by their own conduct appeared to be quite disinterested in contesting the case which is related to an issue of regularization. Under these circumstances, the case is closed as no Industrial Dispute existent now. Accordingly an order is passed.

KISHORI RAM, Presiding Officer

नई दिल्ली, 20 जनवरी, 2014

**का.आ. 454.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी सी सी एल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 13 का 1991) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-01-2014 को प्राप्त हुआ था।

[ सं. एल. 20012/202/1990-आईआर (सी-1) ]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 20th January, 2014

**S.O. 454.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 13/1991) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s BCCL and their workmen, received by the Central Government on 20-01-2014.

[No.-L-20012/202/1990-IR (C-I)]

M. K. SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (No. 2), AT DHANBAD.

#### PRESENT:

Shri Kishori Ram, Presiding Officer.

In the matter of an Industrial Dispute under Section 10  
(1) (d) of the I.D. Act, 1947.

#### Reference No 13 of 1991.

**PARTIES:** Member Exec. Committee  
Janta Mazdoor Sangh,  
Vihar Building, Jharia Dhanbad,  
**Vs.**  
General Manager, Sijua Area of  
M/s BCCL, Sijua, Dhanbad.

#### APPEARANCES:

On behalf of the : Mr. K. N. Singh, Ld. Advocate  
workman

On behalf of the : Mr. D. K. Verma, Ld. Advocate  
Management

State : Jharkhand

Industry : Coal

Dated, Dhanbad the 18th Nov., 2013.

#### AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec. 10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/202/90-I.R. (Coal-I) dt. 11-12-1990.

#### SCHEDULE

“Whether the action of the management of in dismissing S/Shri Sukhdeo Bhuian, Fitter helper, Suresh Ram, fitter Helper and Sarda, Shovel Operator vide their letter No. Sen/Bans/PER/89/393, Sen. Bans Per/89/19/392, Sen. Bans/PER/89/19/385 dt. 31-3-89 respectively is justified ? If not, to what relief the workmen are entitled ?”

2. The case of the workmen as sponsored by the Janta Mazdoor Sangh, Dhanbad, is that all three workmen Sukhdeo Bhuia, Suresh Ram and Sarad were initially appointed as Miner/Loaders by the Management after their full identity duly certified by the Competent Authorities. Consequently, they were converted from piece rated to Time rated men. After their long satisfactory services, the management raised the question of fresh identification certificate, and stopped them from working from 24-10-1987 followed by the charge sheet on 16-12-1987 which was devoid of precise nature of misconduct alleged against each of them. At raising an Industrial Dispute before the RLC. (C), Dhanbad for the relief of resumption of duties or payment of subsistence allowance as per the Standing Orders, the Management held domestic enquiries and issued them their dismissal letters on 31-3-1989 against which the dispute arose.

In course of the ex-parte enquiry proceeding, Sri K. N. Panda, the Clerk though deputed as the Representative for the Management, yet acted as a witness, put against the workmen the allegations that they individually secured their employment by giving false information about their names, father's names and home addresses :

Sri Sukhdeo Bhuia's real name was Sri Shivji Singh S/o Ayodhya Singh of Village Lumbani, Distt. Bhojpur, but not of village Ugra, PO : Balapur, Dist : Mongher as recorded in the Company's documents. The father's name of workman Suresh Ram was Teju Chamar and not Teju Ram as informed by him, and the name of Teju's wife was Doju Kamin and she was his mother, whereas there was no real difference between the surnames “Chamar” and “Ram”.



And Sri Sarda was not son of Late Jirwa Kamin, but in fact the Late Jirwa Kamin, the mother of Sardam, was second wife of his father. The information furnished by him was not false.

All the statement/evidence of Sri R. N. Panda was not based on his personal knowledge, but allegedly collected from the O.C., Loyabad P.S. the same was not substantiated by oral or documentary evidence. The hearsay evidence of Sri Panda, not worthy of credence, can not be the basis of their dismissal. The Management miserably failed to establish the charges in all the cases, and wrongly shifted the onus of proof on the workmen. The action of the Management in dismissing the workmen on the perverse finding of the Enquiry Officer is not justified.

3. The Union concerned in its rejoinder for the workmen categorically denied all the allegations of the Management as vague, and stated that in fact the difference L.C. Applications u/s 33 © (2) were filed before the central Labour Court, No. 2, Dhanbad, for the wages differences for the period of stoppage prior to dismissal.

4. Whereas challenging the maintainability of Industrial dispute, the contra pleaded case of the management is that that the three workmen concerned had entered into the employment of M/s Bharat Coking Coal Ltd. in 1981 surreptitiously as dependent sons of the workmen who had opted for voluntarily retirement under the Voluntary Retirement Scheme for female employees.

Sri Suresh Ram sneaked into employment of the Management by falsely disclosing his identity as dependent son of Chandwa Kamin, female workers of the same colliery, but he was not her dependent son, as he was factually son of Teju Ram, of village Kaslea Khas Muskiya, P.O. Mirza, Jamalpur, Ghoshi Pargana, Thana Ghoshi, Dist : Azamgarh in U.P. His photograph was attached as such by the Mukhiya of the village Panchayat concerned and the District Officer of Azamgarh District.

Sri Sukhdeo Bhuiya also got employment of the Management by falsely disclosing his identity as dependent son of Ayodhya Bhuiya of Vill : Ugra, P.O. Baliapur, Dist; Munger, Bihar, whereas he was factually the son of Ayodha Singh of Village : Laghmani Dist : Bhojpur.

Likewise Sri Sarda also got his employment of the Management as dependent son of Smt. Jirwa Kamin but in reality he is Sarda Singh Yadav of Village : Govindpur, Dist : Gazipur (U.P.), and Smt. Jirwa Kamin was wife of Sri Chandrika Bhuiya so the initial appointments of all the workmen concerned were illegal and void. At the time of their employment. The concerned workmen gave false information about name, age, father's name which was misconduct under the Certified and Model Standing Orders applicable to Coal Mines.

5. Later on it was learnt in 1987 of their employments based on false information and a few others, so they were directed by the Dy.C.M.E., Sendra Bansjora colliery to submit their fresh identifications by their respective B.D.O. . The District Officer by a letter No. SB/PD/87/21/950 dt.10.08.1987. But the concerned workmen did not produce the same within stipulated period therein. Therefore, they were stopped from work as per the letter No. SB/Dy.CME/87/37/1114 dt.24.10.1987 with immediate effect.

Again as per another letter No. SB/SPO/87/21/1372 dt.16.12.1987, the workmen were given seven days time to produce their identification from their respective B.D.O. and District Officer, failing which the disciplinary action would be taken against them under the Model Standing Order para 17(1)(O) applicable to the colliery. Subsequently to those events, the Standing Orders had been certified for all the Coal Mines of M/s Bharat Coking Coal Ltd.

6. These workmen Suresh Ram, Sukhdeo Bhuiya and Sarda as per the Orders dtd. 30th Oct. and 13th Nov. 1991 of the Central Government Labour Court No. 2, Dhanbad, in their respective L.C.Nos. 06.4 and 5/1990 were allowed the payment of wages Rs. 22,567.42, Rs. 21,161.63 and Rs. 24,809.46 for the period of their stoppage of work from 24.10.1987 till 31.03.1989 respectively.

The domestic enquiry was fully held against the workmen in accordance with the principles of natural justice, after giving the full opportunity for their defiance. They participated in the domestic enquiry. They were found guilty of the charges. The Enquiry Officer submitted his report based on reasons. The Employees agreed with the Enquiry Findings of the Enquiry Officer and the workmen were dismissed from service as per their letters dt.31.3.1989 after the approval of the competent Authority. The action of the Management in dismissing the workmen from services was justified. The workmen are not entitled to any relief. In 'case of holding the domestic enquiry unfair, the management sought a relief for leading evidence for justification of its action.

#### FINDING WITH REASONS

7. At the onset, it is worth noting that at the demise of one workman Sukhdeo Bhuiya on 26.12.1993, his son Santosh Kumar on his petition has been substituted in his place as per the Order No.41 dt.26.07.2013 of the Tribunal.

In the instant case, after the examination of the Management witness and the workmen's ones at the preliminary issue of fairness, the Tribunal as per its Order No. 100 dt. 31.8.2004 held the domestic enquiry unfair and improper. Hence, the management further produced its evidence on merit as allowed for

substantiating the charges against the workmen, In result, the MWI Rabindra Nath Panda, the Clerk and MW2 Rakesh Ranjan, the Sr. Legal Inspector were examined on merits on behalf of the Management.

8. Mr. K.N. Singh, the Learned Counsel for the Union/workmen submits that even on merits, none of the afresh two witnesses of the Management could prove the impersonation of these three workmen in their employment nor any police document to that effect; and that the workmen were provided their employment under V.R.S., neither any complain proved nor lady concerned was examined; so their dismissal in lack, of the substantial evidence of the O.P/Management or merely on a hearsay evidence at the charge was not justified; they are entitled to re-instatement in the services.

In response to it, Mr. D.K.Verma, the Learned Counsel for the O.P/Management has contended that all the three workmen had got their employment under V.R.S. Scheme, none of them examined himself or any witness on their behalf as to their identity of their being genuine, and in the departmental/domestic proceeding into it, it turned out evidently none of them was genuine workmen; it is settled law that preponderance of probabilities, not the proof, prevails in the departmental proceeding.

On perusal of the fresh materials/evidence on merits on the case record, I find that MWI Rabinda Nath Panda (R.N.Panda) has stated that the workmen were not genuine persons, so they were charge- sheeted for it. MW2 Prakesh Ranjan, the Sr. Legal Inspector for the OP/Management on merits has clearly stated that after the enquiry against the workmen Sukhdeo Bhuia, Sarda and Suresh Ram for their impersonation, they were dismissed; and as per the photocopy of the seizure list (Ext.M.10) regarding the Jogda P.5. Case No. 51/87 instituted against the workmen and some others, the police had seized all the papers.

In the reference, no charges of impersonations under clause 17.(1)(0) of the Standing Orders of the Company could be substantiated. Therefore, the dismissals of the workmen were not proper, so are liable to be set aside.

In the result, it is, in the terms of the reference, responded and hereby

#### ORDERED

That the Award be and the same is passed that the action of the management in dismissing S/Shri Sukhdeo Bhuian (now dead during pendency), Suresh Ram, both fitter Helper and Sarda, Shovel Operator as per their concerned letters dt.31.03.89 respectively is unjustified. Therefore, were Late Sukhdeo Bhuian alive, he like Suresh Ram and Sarda would have been entitled to re-instatement in their services without their back

wages. In case Late Sukhdeo Bhuian died prior to his retirement age, his substituted dependent son Santoh Kumar in his place is entitled to an employment as per the rule of the Company, otherwise to the all retrial benefits of his father subject to the rules accordingly.

Likewise workmen Suresh Ram and Sarda are entitled to re-instatement in their services but without back wages, if not superannuated, otherwise to their own all retrial benefits.

KISHORI RAM, Presiding Officer

नई दिल्ली, 20 जनवरी, 2014

**का.आ. 455.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी सी सी एल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 80 का 2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-01-2014 को प्राप्त हुआ था।

[सं. एल. 20012/22/2005-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 20th January, 2014

**S.O. 455.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 80/2005 of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s BCCL and their workmen, received by the Central Government on 20-01-2014

[No.-L-20012/22/2005-IR (CM-I)]

M. K. SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (No. 2), AT DHANBAD.

#### Present :

Shri Kishori Ram Presiding Officer.

In the matter of an Industrial Dispute under Section 10 (1) (d) of the I.D. Act, 1947.

#### Reference No 80 of 2005.

#### PARTIES :

Secretary,  
Bihar Colliery Kamgar Union,  
Hirapur, Dhanbad

Vs.

G. M. Kusunda Area of  
M/s BCCL, Kusunda,  
Dhanbad.

#### APPEARANCES :

On behalf of the work- : Mr. K.Chakraborty, Ld.  
man Advocate

On behalf of the : Mr. U. N. Lal, Ld. Advocate  
Management  
State : Jharkhand Industry : Coal  
Dated, Dhanbad the 23rd Dec., 2013.

### AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec. 10(1)(d) of the I. D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/22/2005-I.R. (C-I) dt. 26-07-2005.

### SCHEDULE

“Whether the action of the management of Godhur Colliery under Kusunda Area of M/s BCCL in posting Sri Pradip Kumar Layak, Trainee (Typist) Cat. I as General Mazdoor Cat-1 instead of regularizing him as Clerk Grade-III is justified? If not, to what relief is Sri Pradip Kumar layak entitled and from what date ?”

2. Neither Mr. K. Chakraborty, the Ld. Advocate for the Bihar Colliery Kamgar Union nor workman Pradip Kumar Layak appeared nor any witness on behalf of the workman produced since pending for a long time from 9-11-2011, for which last chance was also given in addition to Regd. notices Mr. U. N. Lal, the Ld. Advocate for O. P. / Management is present.

On perusal of the case record, it is quite clear that the Present reference relates to an issue of regularization of the workman as Clerk Gr. III, but not a single witness produced so far one behalf of the workman. The Union Representative and the workman by their conducts appear to be quite uninterested in contesting the Reference. Under these circumstances, proceeding with the case for uncertainty is not only useless but also a mere wastage of time of the Tribunal. In result, the case is closed as no Industrial Dispute existent and accordingly it is ordered as ‘No Dispute award.’

KISHORI RAM, Presiding Officer

नई दिल्ली, 20 जनवरी, 2014

**का.आ. 456.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी सी सी एल के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 172 का 1998) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-01-2014 को प्राप्त हुआ था।

[सं. एल. 20012/238/1996-आईआर (सी-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 20th January, 2014

**S.O. 456.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 172/1998 of

the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s BCCL and their workmen, received by the Central Government on 20-01-2014.

[No.-L-20012/238/1996-IR (CM-I)]

M. K. SINGH, Section Officer

### ANNEXURE

### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (No. 2), AT DHANBAD.

Present: Shri Kishori Ram Presiding Officer

In the matter of an Industrial Dispute under Section 10 (1) (d) of the I.D. Act, 1947.

### Reference No 172 of 2008.

**PARTIES :** Mr. D. Mukherjee,  
Secretary, Bihar Colliery  
Kamgar Union, Hirapur,  
Dhanbad

**Vs.**

The Dy. Chief Mining  
Engineer/Agent, Balihari  
Colliery of M/s BCCL,  
Dhanbad-826001

### APPEARANCES :

On behalf of the work- : Mr. D. Mukherjee, Ld.  
man/Union Advocate  
On behalf of the : Mr. D. K. Verma, Ld.  
Management Advocate

State : Jharkhand Industry : Coal

Dated, Dhanbad the 14th Nov., 2013.

### AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec. 10(1)(d) of the I. D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/238/96-I.R. (C-I) dt. 14-07-1998.

### SCHEDULE

“Whether the action of the management of Balihari Colliery of M/s BCCL, Dhanbad in illegal and arbitrary denial of services to Shri Hareram Ram & others (as per list) is justified ? If not, to what relief these workers are entitled and from what date ?”

2. The case of sponsoring Bihar Colliery Kamgar Union, Dhanbad for workmen S/Sri Hareram (Hariram) Ram & others is that the concerned workmen had been performing the cutting of stone, cleming coal, drains, driving, galary, drilling, isolation-stopping digging in stone, cleaning coal from conveyer belt etc, as permanent workmen in Balihari Colliery under the direct control and supervision of the management since long. Those were the jobs of prohibited category. They put in more than 190/

240 days attendance in each calendar year. They were being supplied all the implements by the Management for the jobs. They were being paid their wages below the rates of NCWA through different intermediaries only to camouflage the real issue. They rendered their service, and produced goods for the benefit of the management. But the management managed different paper arrangement to deprive the poor workmen of their legitimate wages and other benefits. As the workman began to demand for their regularization, the anti labour management unreasonably and illegally stopped them from working in the year 1996 against the principles of natural justice. The Management had also not maintained any statutory Register regarding the workmen. At last, the failure in the conciliation proceeding in the Industrial Dispute raised by the Union before the ALC®, Dhanbad, resulted in the reference finally as per the Order of the Hon'ble High Court .Patna, Ranchi Bench in CWJC No. 3390/97. The action of the Management was illegal, vindictive, anti-Labour and unjustified. All underground workmen are legally bound to work under the direct control and supervision of the management.

3. The Union in its rejoinder categorically denied all the allegations of the OP/Management as false,

4. Whereas the contra pleaded case of the OP/Management is that no employer-employee relations existed any time between the management and the concerned persons. The sponsoring Union had already represented before the ALC®, Dhanbad, Sri Hariram Ram and others as the Co-operative Labourers and members of the Co-operative Society "Azad Shramik Sammittee" were working at Balihri Colliery since 1989, so far the absorption of the co-operative labourers on regular basis. The aforesaid Co-operative Society was awarded contracts by the work- orders for the jobs of Civil Construction once or twice in a year for a period of 15 days in one month at a time. The said Co-operative Society accordingly constructed ventilation stopping in underground Mines. In the ventilation stopping work, the workmen of the Cooperative society, were required to load the materials bricks, sand, cement etc. into tubs on the surface, which were transported by the Trammer who deposited at the appropriate place inside the Mine wherefrom they carried the materials to the working place of ventilation Stoppage. For it, the construction of the Brick wall followed by its plastering is made to prevent leakage of air between intake and return inside the Mine. The works in order to ensure supply of fresh air at the working places for the benefits of employed workmen are available intermittently once or twice a year in the Mine. Contractors are occasionally deployed for performance of such temporary and casual work.

The Cooperative Society formed as per the policy decision of the State Government under the Co-operative Societies Act acted as a contract of the Company, and engaged their members on the contract jobs awarded to it as per the work- order issued in its name. But the Society

was never engaged for any contract jobs of prohibiting character as per the Notification issued by the Central Government u/s 10 of the Central Labour (Regularization and Abolition) Act, 1970. The allegation that the workmen worked the jobs of prohibited nature is an imaginary. The Union by including many jobs seekers in some contract workers as 31 Co-operative labourers raised the Industrial Dispute before the A.L.C. for their regularization. Initially the matter devoid of merits was rejected by the Central Government, but as per the order of the Hon'ble High Court of Patna, Ranchi Bench, it was referred to the Tribunal for adjudication. The claim of the workmen for regularization is baseless. They are not entitled to any relief.

5. The O.P./Management in its rejoinder specifically denied all the allegations of the Union, and stated that no isolation stoppings were built during the relevant period, so also making duggis in stone and cleaning of coal from conveyor belt etc., are absurdities, no question arises as to carrying on any contract job under the control and supervision of the management. The payment was to the Co-operative Society as per the scheduled rates which paid its all members who actually performed the jobs, and all the members of the society got dividend on the profits made out of the contract. As the management of Balihari Colliery could not provide sufficient contract jobs, they engaged themselves various in other jobs elsewhere, as they did not depend on the contract job of Balihari Colliery. As they were not on duty, the question of stopping them from duty neither arose nor arises. The Management followed the provisions of laws as applicable to the Mines.

#### FINDING WITH REASONS

6. In the reference, WWI Sahadeo Mahato (SL. No.10 as per the List), one of the workmen examined in behalf of the Union for them, but not any witness examined from the side of the O.P./Management.

Mr. D. Mukherjee, the Learned Advocate-cum-Union Representative has vociferously submitted that Sri Sahadeo Mahato (WW1) has unchallengably established all the workmen concerned to have continuously done the perennial job of cutting drain, duggi, stone, loading of stones on the Trolley as per their engagement slips (Ext.W.1 Series) etc. since 1989 as per instruction of the In-charge concerned; but their wages were paid not in accordance with NCWA provision; when they demanded their wages for the jobs, they were stopped by the management from working from 1996. According to Mr. Mukherjee, the evidence of the workman (WW1) being devoid of cross-examination by the Management remained unchallenged; when the witnesses were not tested in that way, their evidence is to be accepted as held in the case of Karmidam Sarda Vs. Sailaja Kanta Mitra, AIR 1940(Pat) 683; and the failure to cross-examine witnesses in respect of materials assertion-Party should be presumed to have admitted of that assertion [1977 Cr.L.J.(Del) 410, Bal Kishna Vs., Shet & Ors].



7. Further argument by Mr. Mukherjee on their behalf as also witnessed by Sahadeo Mahato (WW1) is that Sri Gaya Ram Mahato and 75 others of Reference No. 204/94 as their colleagues of same Balihari Colliery and the same Co-operative Society are working as per the Award of the CGIT No. 1 which was affirmed upto the Hon'ble Supreme Court in the Civil Appeal No. 3962/2006, though the Award was for regularisation, the Hon'ble Apex Court directed for reinstatement. This plea is untenable, as every ratio decidendi has its own factum. In the instant case, I find that Sri Sahadeo Mahato (WW1) has asserted that they had got the nine (engagement) slips (Extt. W. 1 series) from the office of the Colliery since that time, but he appears to have intentionally denied in cross by the Court whether each slip bears the Azad Samittee or Azad Shramik Sahayog Samittee. All the nine original engagement slips disclose their heading "Azad Samittee", but one of them bears "Azad Shramik Sahayog Samittee".

All the nine slips relate to the period of Jan, 18, 2, 23, Feb 5, 10, 11, 15, May 24 and Sept 9, 1993 only; Out of total 31 listed workmen, only 13, namely SI. Nos. Kishore Turi, 2. Hareram Ram, 8. Churaman Mahato, 9. Mithulal Mahato, 10. Sahadeo Mahato (WW1), 21. Bameshwar Rajwar, 22. Suresh Pd. Mahato, 24. Narendra Yadav, 25. Krishna Mahato, 26. Raj Kumar Bharti, 27. Chota Lal Mahato, 28. Avilash Mahato, and 29. Naresh Mahato appear to have irregularly worked for 01.6, 01, 06, 01, 05, 7, 5, 5, 7, 2, 3 and 2 days respectively during the said nine days in the year 1993, but 24 other unlisted persons are named in the said same slips.

8. So far as the period of the workmen's working is concerned, their initial period is vague as "since long" in their pleading para first as compared to the specific year "since 1989" firstly disclosed in the evidence of WWI Sahadeo Mahato. Whereas the calling for Attendance register Form 'C' for the period 1992 to 1996 from the management as per the petition as per list dt. 7.5.99 devoid of any documents as per the list appears to be baseless. Besides, the fact of Sri Gaya Ram Mahato and 75 others as their colleagues as per the award of the Tribunal concerned in the Ref., No. 204/94 as brought forward by WWI Sahadeo Mahato in his evidence has no base of their pleadings. Hence it is inadmissible.

9. Besides, Mr. Mukherjee, the learned Advocate-cum-Union Representative quoting many rulings (to be cited) has to submit that Hon'ble Supreme Court has been pleased to hold that where the workmen were engaged through so-called contractors known as "Mukdama" as also pleaded by the management no employer-employee relationship existent between the workmen and the management, the workmen concerned were held as the employees of the Management in the case of the United Salt Works & Industries, Kandla Vs. their workmen, 1962 IJ(L&J) 131, and Basti Sugur Mills Ltd. Vs. Ram Ujagar, SCLJ (V 10) 4867 respectively; The Hon'ble Apex Court also held the

contractor workmen as the employees of Factory Owner in the case of D.C. Dewan Saheb Vs. United Bidi Workers' Union, LLJ (Vol. II) 1964 (SC) 633, wherein the Bidi Factory Owners used to supply Bidi leaves and tobacco to the contractor, who supplied the same to the workmen, who deposited their products to the contractor, who lastly did so to the Factory Owner.

Same view was held by the Hon'ble Apex Court regarding the Cycle Stand workers in the case of Royal Talkies Vs. employees State Insurance Corp. SCJ (Vol. 10) (SC) 101 wherein the concerned workmen were working in the Cycle Stand of the Cinema Hall. At the direction of the E.S.I. Authority to the Management of the Cinema Hall to, pay E.S.I. contribution, the Cinema Hall Owner refused to pay it on the plea that the Cycle Stand was maintained by contractor, and he had no concern with the cycle stand. It was held that the Cycle Stand is maintained for the benefit of the Cinema Hall, so the owner of is as liable to pay contribution as employer. •

10. In the case of catering cleaners Vs. South Eastern Railway, 1987 Lab. I.C. (SC) 619 at the direction of the Hon'ble Supreme Court, the concerned workmen working in the job of permanent nature in the Train catering as just as the award dt. 8.8.97 of the same Tribunal passed in Ref. Nos. 156/94 and 72/95 in favour of the workmen permanent nature as remained confirmed up to the Hon'ble Supreme Court in S.L.P. 15253/1993 were regularized as the employee of the Railway.

Further stressing on the Award of the CGIT No. 1, Dhanbad, passed in Ref. No. 58/1992 concerning the contractor's workmen of Swang Washery of M/s CCL having been confirmed upto the Hon'ble Apex Court of five Judges in S.L.P. (C) No. 1939/99 reported in 2001 L.L.R. SC 961, Steel Authority of India Ltd. Vs. National Water Frost Workers & Ors., Mr. Mukherjee submitted that the CGIT No. 1, Dhanbad, by the award dt. 3rd Oct., 1996 had directed the Appellant to absorb the contract labour; and that likewise the awards dt. 21.2.1992 & 8.8.91 of the same CGIT No. 1, Dhanbad, in the Ref. Nos. 151/1989, 156/94 and 72/95 related cases of similar nature remain confirmed by the Hon'ble Supreme Court in the S.L.P. (C) Nos. 14964/98 and No. 15253/99 respectively.

11. Further the plea of Mr. Mukherjee is that in the case of G.B. Pant University of Agri. Tech vs. State of U.P., 2000 (87) F.L.R. (Sc) 7, the cafeteria workers in university providing food to the inmates of the hostels "were held as employees of the university to be entitled to regularization of their services in terms of Award passed by the Labour Court, that if the fact of employment of workmen with Appellant (Employer Establishment) to work in their premises found established after removing the mask of employment under contractor, the Appellant can not escape its liability- Respondents were its employees as held in the case of M/s Bharat Heavy Electrical Ltd Vs. State of U.P., 2003 (98) F.L.R. (SC) 826. Underlining the observation of the

Hon'ble Apex Court in para 2 of the Judgment in the case of Bhillwara Dugdh Utpadak Sahakari Ltd. Vs. Vinod Kumar Sharma reported in 2011 L.L.R.(SC)1079, Mr. Mukherjee, Learned Advocate cum Union Representative has quoted it as such in order to avail their liability under various labour statutes employers are very often resorting to subterfuge by trying to show that their employee are, in fact, the employees of a contractor. It is high time that the subterfuge must come to an end.

12. On the perusal and consideration of the oral and documentary evidence of the workmen as on the case record, I find that the case of the workmen as brought up by the Union concerned itself suffers from obscurity and vagueness. Having due regards to the aforesaid rulings, I am of the view that none of the rulings appears to be helpful to the present case which is itself devoid of substantial merits, because only 13(thirteen) workmen under Sl. Nos.1, 2, 8 to 10, 22.22 and 24 to 29 out of total 31 as per the list enclosed appeared to have worked not more than 1 to 7 days in the year 1993 as per their original nine engagement slips (Ext.W.1 series) issued by the Azad Samittee or Azad Shramik Sahayog Sahayog which carry 18 unlisted workmen. The said 13 named workmen were neither regular nor completed 190/240 days works in any calendar year. The union has no account of the names of rest 18 workmen as per the list enclosed with the Reference under adjudication.

In view of the aforesaid facts and circumstances, it is, in the terms of the reference hereby resonded, as such :

### ORDERED

That the Award be and the same is passed that the action of the management of Balihari Colliery of M/s. BCCL, Dhanbad, in denial to the services of Shri Hareram Ram and others (as per the list) is quite justified. It is not illegal and arbitrary. Hence, none of the workmen are entitled to any relief from any date.

KISHORI RAM, Presiding Officer

#### List of the workmen as per Ministry' File No. L-20012/238/96-IR(C-I)

| Sl. | Name (S/Sh.)     | Father's Name (S/Sh.) |
|-----|------------------|-----------------------|
| 1   | 2                | 3                     |
| 1.  | Kishore Turi     | Muneshwari Turi       |
| 2.  | Hariram Ram      | Rajbali Ram I         |
| 3.  | Kali Pado Mahato | Anand Mahato          |
| 4.  | Shankare Mahato  | Adu Ram Mahato        |
| 5.  | Jaleshwar Mahato | Somare Mahato         |
| 6.  | Faloveri Mahato  | Chandu Mahato         |
| 7.  | Gajo Paeamanik   | Somar Paramanik       |
| 8.  | Churaman Mahato  | Atul Mahato           |

| 1   | 2                     | 3                   |
|-----|-----------------------|---------------------|
| 9.  | Mithulal Mahato       | Balichand Mahato    |
| 10. | Sahadeo Mahato        | Ratan Mahato        |
| 11. | Kailash Thakur        | Bhulah Thakur       |
| 12. | Azad Mahato           | Dashan Mahato       |
| 13. | Tapan Mahato          | Diwakar Mahato      |
| 14. | Prabhakar Kr.Singh    | N.K.Singh           |
| 15. | Vinod Kumar Mahato    | Rajeshanadan Mahato |
| 16. | Yudhusthir Mahato     | Khagen Ch.Mahato    |
| 17. | Biswajit Kumar Singh  | Mandashar Pd.singh  |
| 18. | Ram Chandra Sao       | Kishun Sao          |
| 19. | Brij Mohan Kumar      | Bhikan Kumar        |
| 20. | Ajit Kumar Singh      | Mandashar Pd.singh  |
| 21. | Baneshwar Rajware     | Manik Rajware       |
| 22. | Suresh Pd.Mahato      | Tej Narayan Mahato  |
| 23. | Sudhakare Kumar Singh | N.N.singh           |
| 24. | Narendra Yadav        | RamChandra Yadav    |
| 25. | Krishna Mahato        | Bidu Mahato         |
| 26. | Raj Kr.Bharti         | Ram Narayan Bharti  |
| 27. | Chota Lal Mahato      | Raju Mahato         |
| 28. | Avilash Mahato        | Bhusan Mahato       |
| 29. | Naresh Mahato         | Gulu Mahato         |
| 30. | Biswanth Mahato       | Fulchand Mahato     |
| 31. | Had Nath Kumhar       | Mohit Kumhar        |

नई दिल्ली, 20 जनवरी, 2014

**का.आ. 457.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी सी सी एल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 34 का 2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-01-2014 को प्राप्त हुआ था।

[सं. एल. 20012/92/2011-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 20th January, 2014

**S.O. 457.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.No. 34/2011 of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the management of Bastacolla Area of M/s. BCCL and their workmen, received by the Central Government on 20-01-2014.

[No. L-20012/92/2011-IR (CM-I)]

M. K. SINGH, Section Officer

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL (No. 2), AT DHANBAD****Present :** Shri Kishori Ram, Presiding Officer.In the matter of an Industrial Dispute under Section  
10 (1) (d) of the I.D. Act, 1947.**Reference No. 34 of 2011****PARTIES :** Vice President, Janta Mazdoor  
Sangh, Vihar Building, Jharia,  
Dhanbad**Vs.**Chief Gen. Manager,  
Bastacolla Area of M/s. BCCL,  
Jharia, Dhanbad**APPEARANCES :**On behalf of the work- : Mr. K. N. Singh, Ld.  
man/Union AdvocateOn behalf of the : Nil  
Management

State : Jharkhand Industry : Coal

Dated, Dhanbad the 23rd Dec., 2013.

**AWARD**

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec. 10(1)(d) of the I. D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/92/2011-I.R. (CM-I) dt. 07-12-2011.

**SCHEDULE**

“Whether the action of the management of Bastacolla Colliery of M/s. BCCL, in not providing employment initially to Smt. Rambatee Bhuiani @ Rama Bhuini dependant wife of the deceased workman, there to Sri Kailash Bhuia dependant son of Late Khuri Bhuia under the provision of NCWA is justified and fair? To what relief Smt. Rambatee Bhuini and Sri Kailash Bhuia dependant son of Late Khuri Bhuia are entitled to ?”

2. Neither Union Representative for the Janta Mazdoor Sangh, Bihar Building, Jharia, Dhanbad, nor petitioner Smt. Rambatee Bhuini alias Rama Bhuini or Sri Kailash Bhuia the dependant wife and son of Late Khuri Bhuia respectively appeared nor written statement of the petitioners has been filed despite three Regd. Notices dtd. 10-1-2012, 17-10-2012 and 4-7-2013 on the addresses of both the parties, yet the O. P. /Management as well as the Union Representative/petitioners have not appeared. The Regd. notices have been issued to the Vice President of the Union concerned as well as the O. P./Management on their respective addresses as noted in the reference itself. The conducts of the Union Representative as well as the petitioner (s) by their conducts appear to be uninterested in pursuing the case for finality.

Under these circumstances there is no alternative except closure of the case as no Industrial dispute existent. In resut, the case is closed and accordingly an order is passed as no Industrial Dispute existent.

KISHORI RAM, Presiding Officer

नई दिल्ली, 20 जनवरी, 2014

**का.आ. 458.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कमिश्नर, म्युनिसिपल कारपोरेशन ऑफ दिल्ली के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय 1 दिल्ली के पंचाट संदर्भ संख्या 325/2011 को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-01-2014 को प्राप्त हुआ था।

[सं. एल. 42012/13/2011-आईआर (डीयू)]

पी.के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 20th January, 2014

**S.O. 458.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 325/2011) of the Cent. Govt. Indus. Tribunal/Labour Court No. 1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Commissioner, Municipal Corporation of Delhi and their workman, which was received by the Central Government on 18-01-2014.

[No. L-42012/13/2011-IR (DU)]

P. K. VENUGOPAL, Section Officer

**ANNEXURE****BEFORE DR. R. K. YADAV, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL  
NO. 1, KARKARDOOMA COURT COMPLEX, DELHI****I.D. No. 325/2011**Smt. Vandana  
C/o Nagar Nigam Karmchari Sangh,  
Delhi Pradesh, P-2/624,  
Sultanpuri, New Delhi

...Workman

**Versus**The Commissioner,  
MCD, Town Hall,  
Chandni Chowk,  
Delhi-110006

..Management

**AWARD**

Smt. Vandana, was engaged as a part-time safai karamchari at School Health Services Najaigarh Zone by Municipal Corporation of Delhi (hereinafter referred to as the Corporation) from 20-09-2007 till 23-09-2008. Her services were dispensed with, when requirement to engage

her came to an end. She raised a demand for reinstatement of her services. When needful was not done, A dispute was raised on her behalf before the Conciliation Officer. Since conciliation proceedings failed, the appropriate Government referred the dispute to this Tribunal for adjudication, vide order No. L-42012/13/2011- IR (DU), New Delhi, dated 16th of September, 2011, with following terms :—

“Whether the action of the management of Municipal Corporation of Delhi in terminating the services of Smt. Vandana with effect from 24-09-2008 is legal and justified? What relief the workman is entitled ?”

2. Claim statement was filed by the claimant pleading therein that she was initially appointed on 20.09.2007 under control of School Health Services Department at Najafgarh Zone of the Corporation. She worked without any break till 23-9-2008. She had not given any chance of complaint to the Corporation. She was not allowed to discharge her routine duty with effect from 24-09-2008, despite several visits. Since she joined her duty as per directions of the Deputy Health Officer as per policy and recruitment rule of the Corporation, hence without passing any speaking order, the Corporation cannot discontinue her service. No prior notice was given nor was any charge sheet served upon her. A legal notice dated 01-12-2008 was served on the Corporation, which is duly received by it. However, the Corporation has failed to comply with her notice of demand. She seeks reinstatement in service of the Corporation with full back wages along with all consequential benefits of continuity of service.

3. Claim was resisted by the Corporation pleading that the claimant was engaged as a part time safai karamchari on 20-09-2007 for a short term, vide office order No. DHO (S)/NGZ/2007/165 dated 20-09-2007. She worked only for four hours per day. She was relieved on 23-09-2008 after joining of regular employee of the post. She has no right to claim regular post/appointment with the Corporation. Corporation further pleads that no legal notice dated 01-12-2008 was served on it. Her claim is, therefore, liable to be dismissed.

4. On perusal of pleadings, following issues were settled :

(1) Whether management complied with provisions of section 25-F of the Industrial Disputes Act, 1947?

(2) As in terms of reference.

5. The claimant failed to adduce her evidence despite grant of several opportunities. Instead of adducing evidence, she absented from putting her appearance before the Tribunal from 17-5-2012 till the date of the award. Hence matter was proceeded with under rule 22 of the Industrial Disputes (Central) Rules, 1957 and evidence of the claimant was closed. Dr. Gaju Toppo, Deputy Health Officer (School)

cum Chief Administrative Medical Officer, tendered his affidavit as evidence on behalf of the Corporation. No other witness was examined on behalf of the Corporation.

6. Arguments were heard at the bar. None came forward on behalf of the claimant to advance arguments. Shri Umesh Gupta, authorized representative, raised submissions on behalf of the Corporation. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows Issue No.1

7. As unfolded by Dr. Gaju Toppo, claimant was engaged as part-time safai karamchari on 20-09-2007, for a short term. He details that she was working for a period of four hours per day. She was relieved from service on 23-09-2008 when regular incumbent of the post joined. Out of facts projected by Dr. Toppo, it came to light that the claimant was engaged as leave substitute, An employee who is engaged in an industrial establishment in place of another workman, whose name is borne on muster rolls of the establishment, is called a badli workman. A badli workman shall be ceased to be regarded as such for the purpose of section 25C of the Industrial Disputes Act, 1947 (in short the Act) if he completes one year of continuous service in the establishment. In other words, a badli is a workman appointed against the post, permanent or temporary, when incumbent of the post is temporarily absent. Unless he completes one year of continuous service in the establishment, a badli cannot claim status of permanent workman, even though the management fails to satisfactorily prove that permanent incumbent was there in the respective place or was temporarily absent.

8. Here in the case, Smt. Vandana was engaged as a part time safai karamchari on 20-09-2007. She was relieved from service on 23-09-2008 when regular employee happened to join the post. Out of these facts, unfolded by Shri Toopo it came to light that the claimant rendered continuous service of one year with the Corporation. When she completes service for a period of one year, she sheds off status of badli workman. Question for consideration would be as to whether a part time employee is a workman within the meaning of section 2(s) of the Act. For sake of convenience, definition of term 'workman' is reproduced thus:

“2(s) Workman means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of that dispute, or whose dismissal, discharge



or retrenchment has led to that dispute, but does not include any such person -

- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950) or the Navy Act, 1957 (62 of 1957), or
- (ii) who is employed in the police service or as an officer or other employee of a prison, or
- (iii) who is, employed mainly in a managerial or administrative capacity, or
- (iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature”.

9. The first part of the definition gives statutory meaning of the term workman. This part of the definition determines a workman by reference to a person (including an apprentice) employed in an "industry" to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward. This part determines what a "workman" means. The second part is designed to include something more in what the term primarily denotes. By this part of the definition, person (i) who have been dismissed, discharged or retrenched in connection with an industrial dispute, or (ii) whose dismissal, discharge or retrenchment has lead to an industrial dispute, for the purposes of any proceedings under the Act in relation to such industrial dispute, have been included in the definition of "workman". This part gives extended connotation to the expression "workman". The third part specifically excludes the categories of persons specified in clauses (i) to (iv) of this sub-section. The third part connotes that even if a person satisfies the requirements of any of the first two parts but if he falls in any of the four categories in the third part, he shall be excluded from the definition of 'workman'. Not only the persons who are actually employed in an industry but also those who have been discharged, dismissed or retrenched in connection with or as a consequence of an industrial dispute, and whose dismissal, discharge or retrenchment has lead to that dispute, would fall within the ambit of the definition. In other words, the second category of persons included in the definition would fall in the ambit of the definition, only for the purpose of any proceedings under the Act in relation to an industrial dispute and for no other purposes. Therefore, date of reference is relevant and in case a person falls within the definition of workman on that day, the Tribunal would be vested with jurisdiction to entertain it and the jurisdiction would not cease merely because subsequently the workman ceases to be a workman.

10. For an employee in an industry to be a workman under this definition, it is manifest that he must be employed to do skilled or unskilled manual work,

supervisory work, technical work or clerical work. If the work done by an employee is not of such a nature, he would not be a workman. The specification of the four types of work obviously is intended to lay down that an employee is to become a workman only if he is employed to do work of one of those types, while there may be employees who, not doing any such work, would be out of the scope of the word 'workman', without having resort to the exceptions. It cannot be held that every employee of an industry was to be a workman except those mentioned in the four exceptions as in that case these four classifications need not have been mentioned in the definition and a workman could have been defined as a person employed in an industry except in cases where he was covered by one of the exceptions.

11. In cases where an employee is employed to do purely skilled or unskilled manual work, or supervisory work or technical work or clerical work there would be no difficulty in holding him to be a workman under the appropriate classification. Frequently, however, an employee is required to do more than one kind of work. In such cases, it would be necessary to determine under which classification he will fall for the purpose of finding out whether he does not go out of the definition of 'workman' under the exceptions. The principle is now well settled that, for this purpose, a workman must be held to be employed to do that work which is the main work he is required to do even though he may incidentally doing other type of work.

12. As projected above, definition of workman does not make any difference between part time or full time employees. The Apex Court in *Birdichand Sharma* [1961 (3) SCR (161)] and *Silver Jubilee Tailoring House* [1974 (3) SCC 498] was confronted with a proposition as to whether part time employee answers definition of workman. It was conclusively ruled therein that there was absolutely no distinction between full time and part time employee and that an employee who was working on part time basis would not lose his status of workman, if he answers ingredients of section 2(s) of the Act.

13. In *General Manager Telecom, Nagpur* (2001 Lab.I.C. 2127), the Bombay High Court also reaffirmed the same proposition. It was ruled therein that definition of workmen as given in the Act does not make any distinction between full time employee and part time employee. It does not lay down that only a person employed for full time will be said to be a workman and that the one who is employed for part time should not be taken as workman. What is required is that the person should be employed for hire to discharge work manual, skilled or unskilled etc. in any industry. If this test is fulfilled, part time employee can also be said to be a workman.

14. As admitted by Dr. Toppo the claimant was engaged to work as a sweeper, on part time basis. It is a

matter of common knowledge that sweeping job is unskilled manual work. She was doing that job for hire or reward. Thus it is crystal clear that the work performed by the claimant clothes her with the status of a workman. It is, therefore, announced that the claimant was a workman within the meaning of section 2(s) of the Act.

15. The Corporation nowhere projects that when services of the claimant were dispensed with, notice or pay in lieu thereof and retrenchment compensation as contemplated by provisions of section 25F of the Act was given to her. The Act defines "termination by the employer of the service of a workman for any reasons whatsoever", except the categories exempted in sub-section 2(o), to be retrenchment. The definition of the term "retrenchment", as enacted by the Act, is extracted thus:

“(o) “retrenchment” means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include-

- (a) voluntary retirement of the workman; or
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (bb) termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
- (c) termination of the services of a workman on the ground of continued ill-health”.

16. Definition of retrenchment is very wide and in two parts. The first part is exhaustive, which lays down that retrenchment means the termination of the service of a workman by the employer "for any reason whatsoever" otherwise than as a punishment inflicted by way of disciplinary action. Thus main part of the definition itself excludes the termination of service, as a measure of punishment inflicted by way of disciplinary action from the ambit of retrenchment. The second part further excludes (i) voluntary retirement of the workman, or (ii) retirement of workman on reaching the age of superannuation, or (iii) termination of the service of a workman as a result of non-renewal of contract of employment, or (iv) termination of contract of employment in terms of a stipulation contained in the contract of employment in that behalf, or (v) termination of service on the ground of continued ill health of the workman. Reference can be made to the precedents in *Avon Services (Production Agencies) (Pvt.) Ltd.* [1979 (1) LLJ 1] and *Mahabir* [1979 (11) LLJ 363].

17. Section 25F of the Act lays down conditions pre-requisite to retrenchment, which are as follows :

(i) There should be one month's notice in writing to the workman concerned.

(ii) The notice should specify the reasons for retrenchment.

(iii) The period of one month's notice should have expired before retrenchment is enforced, or the workman has been paid in lieu of such notice the wages for the period.

(iv) The workman has been paid retrenchment compensation which should be equivalent to 15 days' average pay for everyone years' service or any part thereof provided it exceeds six months.

(v) The notice is also given to the appropriate Government.

18. For seeking protection under section 25-F of the Act an employee should be in continuous service under an employer for not less than one year. Continuous service for a period of one year may include period of interruption on account of sickness or authorized leave or accident or strike, which is not illegal or lockout or cessation of work which is not due to any fault on the part of the workmen, as enacted by provisions of sub-section (1) of section 25B of the Act. Sub-section (2) of the said section introduces a fiction to the effect that even if a workman is not in "continuous service" within the meaning of clause (1) for a period of one year or six months, he shall be deemed to in continuous service for that period under an employer if he has actually worked for the days specified in clauses (a) and (b) thereof. In *Vijay Kumar Majoo* (1968 Lab.I.C.1180) it was held that one year's period contemplated by sub-section (2) furnished a unit of measure and if during that unit of measure the period of service actually rendered by the workman is 240 days, then he can be considered to have rendered one year's continuous service for the purpose of the section. The idea is that if within a unit period of one year a person had put in at least 240 days of service, then he must get the benefit conferred by the Act. Consequently, an enquiry has to be made to find out whether the workman actually worked for not less than 240 days during the period of 12 calendar months immediately preceding the retrenchment.

19. In *Ramakrishna Ramnath* [1970 (2) LLJ 306], Apex Court announced that when a workman renders continuous service of not less than 240 days in 12 calendar months, he is deemed to have completed one years' service in the industry. It would be expedient to reproduce observations made by the Apex Court in that regard, which are extracted thus :

"Under Section 25-B a workman who during the period of 12 calendar months has actually worked in an industry for not less than 240 days is to be deemed to have completed One year's service in the industry. Consequently an enquiry has to be made to find out

whether the workman had actually worked for not less than 240 days during period of 12 calendar months immediately preceding the retrenchment. These provisions of law do not show that a workman after satisfying' the test under Section 25-B has further to show that he has worked during all the period he has been in the service of the employer for 240 days in the year".

20. Interruption of service occurred during the course of job has to be included in uninterrupted services. Fiction under section 25-B of the Act will operate if workmen has actually worked for 240 days in a calendar year. The explanation appended to section 25-B of the Act specifically includes the days on which workman was laid off under an agreement or he has been on leave with full wages, or he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment and in the case of a female, maternity leave, under the expression 'actually worked' used under sub-section (2) of section 25-B of the Act. Question for consideration would be as to whether the words 'actually worked' would not include holidays, Sundays and Saturdays for which full wages are paid. The Apex Court was confronted with such a " proposition in *American Express Banking Corporation* (1985 (2) LLJ 539), wherein it was ruled that the expression 'actually worked under the employer' cannot mean those days only when the workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. The Court ruled that Sundays and other holidays, would be comprehended in the words 'actually worked' and it countenanced the contention of the employer that only days which are mentioned in the explanation should be taken into account for the purpose of calculating the number of days on which the workman had actually worked though he had not so worked and no other days. The Court observed that the explanation is only clarificatory, as all explanations are, and cannot be used to limit the expanse of the main provision. Precedent in *Lalappa Lingappa* [1981 (1) LJ 308] was distinguished by the Apex Court in the case referred above. The precedent was followed in *Standard Motor Products of India Ltd.* [1986 (1) LLJ 34]. Thus, it is crystal clear from the law laid above that Sundays and holidays shall be included in computing continuous service under section 25-B of the Act.

21. Dr. Toppo unfolds that the claimant was engaged as part time safai karamchari on 20-9-2007. She served the Corporation till 23-9-2008, when, regular incumbent joined the post. By way of relieving her from duties, her services were retrenched by the Corporation. This act of the Corporation does not fall within the exception provided in section 2 (oo) of the Act. Hence her non-continuance in

service on 23-9-2008 amounts to retrenchment. When her continuous service is counted from 23-9-2008, in preceding twelve months from that date, it came to light that she rendered more than 240 days service. Hence it is concluded that she rendered continuous service of one year, as contemplated by section 25-B of the Act.

22. The Corporation nowhere claims that one month's notice or pay in lieu thereof, besides retrenchment compensation, was given to the claimant. Pre-requisite of valid retrenchment, as enacted by section 25-F of the Act, are not claimed to have been complied with by the Corporation. In view of these circumstances it is concluded that the Corporation has not complied with section 25-F of the Act. The issue, is therefore, answered in favour of the claimant and against the Corporation.

#### **Issue No. 2.**

23. Corporation contests the dispute on the count that no notice of demand was served on it prior to raising a dispute before the Conciliation Officer. These facts also remained uncontroverted. The object of the Act is to protect workman against victimization by the employer and ensure termination of industrial dispute in a peaceful manner. The Act, however, does not provide for any set of social and economic principles for adjustment of conflicting interests. Such norms have been evolved and devised by industrial adjudication, keeping in view the social and economic conditions, the needs of the workmen, the requirement of the industry, social justice, relative interests of the parties and common good. These norms have given rights to the industrial employees what may be called industrial rights, as such rights may not be available at common law. Disputes as to the conditions of employment can be resolved by resorting to a technique known as collective bargaining. This tool is resorted to between an employer or group of employers and a bonafide labour union. Policy behind this is to protect workmen as a class against unfair labour practices. What imparts to the dispute of a workman the character of an "industrial dispute" is that it affects the right of the workmen as a class.

24. An industrial dispute comes into existence when the employer and the workman are at variance and the dispute/difference is connected with the employment or non-employment, terms of employment or with conditions of labour. In other words, dispute or difference arises when a demand is made by the workman on the employer and it is rejected by him and vice versa. In *Sindhu Resettlement Corporation Ltd.* [1968(1) LLJ 834], the Apex Court has held that mere demand, asking the appropriate Government to refer a dispute for adjudication, without being raised by the workmen with their employer, regarding such demand, cannot become an industrial dispute. Hence, an industrial dispute cannot be said to exist until and unless a demand is made by the workman or workmen on the employer and it has been rejected by him. In *Fedders Lloyd Corporation*



Pvt. Ltd.(1970 Lab. I.C. 421), High Court of Delhi went a step ahead and held that "... demand by the workman must be raised first on the management and rejected by it, before an industrial dispute can be said to arise and exist and that the making of such a demand to the Conciliation Officer and its communication by him to the management, who rejected the demand, is not sufficient to constitute an industrial dispute."

25. The above decision was followed by Orissa High Court in Orissa Industries Pvt. Ltd. (1976 Lab.I.C. 285) and Himachal Pradesh High Court in Village Paper Pvt. Ltd.(1993 Lab.I.C. 99). However, the Apex Court in Bombay Union of Journalists [1961 (2) LLJ 436] had ruled that an industrial dispute must be in existence or apprehended on the date of reference. If, therefore, a demand has been made by the workman and it has been rejected by the employer before the date of reference, whether direct or through the Conciliation Officer, it would constitute an industrial dispute. In Shambhunath Goyal [1978(1) LLJ 484], the Apex Court appreciated facts that the workman had not made a formal demand for his reinstatement in service. However, he had contested his dismissal before the Enquiry Officer and claimed reinstatement. Against the findings of the enquiry Officer, he preferred an appeal to the Appellate Authority, claiming reinstatement on the ground that his dismissal was bad in law. Then again, he claimed reinstatement before the Conciliation Officer in the course of Conciliation proceedings, which was contested by the employer. Appreciating all these facts, the Apex court inferred that there was impeccable evidence that the workman had persistently demanded reinstatement, rejection of which brought an industrial dispute into existence.

26. In New Delhi Tailor Mazdoor Union [1979(39) FL T 195], High Court of Delhi noted that Shambunath Goyal had not overruled Sindhu Resettlement Pvt. Ltd. But it had distinguished it on facts. It was also pointed out that decision of three Judges bench in Sindhu Resettlement Pvt. Ltd. could not have been overruled by two Judge bench in Shambunath Goyal. The High Court concluded that decision in Sindhu Resettlement Pvt. Ltd., in case of any conflict between the two decisions, must prevail. The High Court held that making of the demand by the workman on the management was sine qua non for giving rise to an industrial dispute.

27. The High Court of Madras in Management of Needle Industries [1986(1) LLJ 405] has held that dispute or difference between management and the workman, automatically arises when the workman is dismissed from service. His dismissal per se creates a dispute or difference between the management and the workman. The Court further observed that "it is nowhere stipulated in the Act, particular in section 2(k), that existence of the dispute as such is not enough but then there should be a demand by the workman on the management to give rise to an industrial dispute". However, this decision appears to be

inconsistent with the ratio of decision in Bombay Union of Journalists(supra) and Sindhu Resettlement (supra). No doubt, for existence of an industrial dispute, there should be a demand by the workman and refusal to grant it by the management. However, a demand should be raised, cannot be a legal notion of fixity and rigidity. Grievances of the workman and demand for its redressal must be communicated to the management. Means and mechanism of the communication adopted are not matters of much significance, so long as demand is that of the workman and it reaches the management. Reference can be made to the precedent in Ram Krishna Mills Coimbatore Ltd. [1984 (2) LLJ 259].

28. The Act nowhere contemplates that the industrial dispute can come into existence in any particular, specific or prescribed manner nor there is any particular or prescribed manner in which refusal should be communicated. For an industrial dispute to come into existence, written claim is not sine qua non. To read into the definition, requirement of written demand for bringing an industrial dispute into existence would tantamount to rewriting the section, announced the Apex Court in Shambunath Goyal(supra). In other words, oral demand and its rejection will as much bring into existence an industrial dispute, as written one. If facts and circumstances of the case show that the workman had been making a demand, which the management had been refusing to grant, it can be said that there was an industrial dispute between the parties.

29. Since the claimant had not come forward to project that demand notice was served on the corporation, under these circumstances, stand taken by the corporation is to be believed. Corporation projects that no notice of demand was served on it, before industrial dispute was raised before the Conciliation Officer. Thus, it is emerging over the record that it has not been established that demand was raised on the Corporation, which was rejected by it and as such, dispute has not acquired status of an industrial dispute.

30. Since the dispute has not acquired status of an industrial dispute, it remains an individual dispute. The appropriate Government was not competent to refer an individual dispute for adjudication to this Tribunal. Even otherwise, the Tribunal cannot invoke its jurisdiction to adjudicate the dispute being an individual dispute. Under, this situation, the Tribunal refrains its hands from adjudicatory process.

31. Since an individual dispute has been referred for adjudication, the Tribunal cannot adjudicate it. Relief of reinstatement in service cannot be granted in favour of the claimant. In view of these facts, an award is passed in favour of the Corporation and against the claimant. It be sent to the appropriate Government for publication.

Dated : 01-01-2014

Dr. R. K. YADAV, Presiding Officer



नई दिल्ली, 20 जनवरी, 2014

**का.आ. 459.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कमिशनर, म्युनिसिपल कारपोरेशन ऑफ दिल्ली के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. 1, दिल्ली के पंचाट (संदर्भ संख्या 299/2011 को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-01-2014 को प्राप्त हुआ था।

[सं. एल-42011/58/2011-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 20th January, 2014

**S.O. 459.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 299/2011) of the Central Government Industrial Tribunal/Labour Court No. 1, Delhi now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of The Commissioner, Municipal Corporation of Delhi and their workman, which was received by the Central Government on 18-01-2014.

[No. L-42011/58/2011-IR (DU)]

P. K. VENUGOPAL, Section Officer

#### ANNEXURE

**BEFORE DR. R. K. YADAV, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL  
NO. 1, KARKARDOOMA COURT COMPLEX, DELHI**

**I.D. No. 299/2011**

Shri Jitender Kumar S/o Sh. Mangal Singh,  
C/o The General Secretary,  
Municipal Employees Union,  
Agarwal Bhawan, G. T. Road  
Tis Hazari, Delhi. - 110054

...Workman

#### Versus

The Commissioner,  
Municipal Corporation of Delhi,  
Town Hall, Chandni Chowk,  
Delhi-110006

...Management

#### AWARD

One Ms. Patasho Devi, working with Municipal Corporation of Delhi (in short the Corporation), died in harness on 27.01.1999. Her son, namely, Shri Jitender Kumar applied for appointment on compassionate grounds. Since no regular post was available for his appointment on compassionate grounds, he was engaged on muster roll as beldar with his consent, vide office order No. HC(CG)/Engg/HQ/2001/1960 dated 28.02.2001. He worked as such upto

17-10-2002. He was involved in a case of abduction of a woman and criminal case was registered against him at Police Station, Kanjhawala Delhi. On account of registration of that case, he abandoned his job. On his acquittal from the case he approached the Corporation for his re-engagement on 24-10-2007. His application was processed and he was engaged afresh as beldar on muster roll vide order dated 20-06-2009. He gave an undertaking to the effect that he will not claim any relief in respect of intervening period from 18-10-2002 to 24-06-2008.

2. After his engagement afresh, he approached the Municipal Employees Union (in short the union) for espousal of his case in respect of his regularization in service of the Corporation with retrospective effect. The union took up his cause and raised a dispute before the conciliation Officer. Since the claim was contested by the Corporation, conciliation proceedings ended into a failure. On consideration of failure report submitted by the Conciliation Officer, the appropriate Government referred the dispute to this Tribunal for adjudication vide order No.L-42011/58/2011-IR(DU), New Delhi dated 12.08.2011, with following terms:

"Whether action of the management of MCD in denying regularization to Shri Jitender, S/o Shri Mangal Singh with retrospective effect with all consequential benefits is legal and justified? What relief is the workman entitled to and from which date?"

3. Claim statement was filed by Shri Jitender Kumar pleading therein that his mother, Ms, Patasho Devi, working as coolie with the Corporation in Ward No. 29, Works Department, Narela Zone, Kanjhawala Delhi, expired on 27-01-1999. He applied for his appointment on compassionate grounds. In February 2001, he was appointed as daily wager beldar. His appointment as daily wager was illegal. However, he was assured of his regularization in service very soon. In October 2000, he was refused duty on account of registration of a criminal case against him. Said act of the Corporation was illegal and unjustified. On his acquittal, by the competent court of law on 27-09-2007, he was again taken on job in June 2008. He is discharging his duties with the Corporation since then. He claims that on the death of Ms. Patasho Devi, he ought to have been given appointment on regular basis and not as a daily wager. He is eligible for appointment on compassionate grounds in accordance with the scheme formulated by the Government of India, which has been adopted by the Corporation. Persons who were similarly placed, have been given appointment on compassionate grounds on regular basis but he has been denied regular appointment by the Corporation. Appointment on compassionate grounds is to mitigate hardship caused to the family due to death of its bread earner. His employment as muster roll employee results in less remuneration to him than regular employees of his

category. Shri Radhey Shyam, junior to him has been regularized but his case has been ignored. Shri Amarjit and Shri Sonu have also been regularized though they have joined on compassionate grounds as daily wager beldar. He seeks award, in his favour directing the Corporation to regularize his services on the post of beldar retrospectively with effect from February 2001 with all consequential benefits.

4. Claim was demurred by the Corporation pleading that no notice of demand was served and as such dispute has not acquired status of an industrial dispute. Person who claim appointment on compassionate grounds, is not a workman within the meaning of section 2(s) of the Industrial Disputes Act, 1947 (in short the Act). He has no right to raise an industrial dispute, when he claims appointment on compassionate grounds. As per policy of the Government, compassionate appointment can be made only upto 5% of total post in the category. Since there is huge backlog of persons awaiting compassionate appointment, the Corporation, as welfare friendly organization, has framed a policy to offer appointment as daily wager on compassionate ground as immediate relief to the bereaved family. After appointment on compassionate grounds as daily wager, case is sent to Scrutiny committee and thereafter appointment is given to such incumbent against a regular vacancy as and when vacancy is available for him. Claimant was given appointment as daily wager beldar vide order No. HC(CG)/Engg/HQ/2001/1960 dated 28-02-2001.

5. The Corporation further projects that the claimant worked as a muster roll beldar till 17-10-2002. Thereafter, he abandoned his services on 18-10-2002. He again appeared on scene on 24.10.2007, when he requested for his engagement again on muster roll. He informed that due to his involvement in a criminal case, he could not attend to his duties till then. His application was processed and he was again engaged as a beldar on muster roll vide order dated 20-06-2008. He himself has given an undertaking to the effect that he will not make any claim for the period from 18-10-2002 till 25-06-2008. Cases of Shri Radhey Shyam, Amarjit and Sonu are placed on different pedestal since they never left their job till regularization of their services. His service will be regularized as per policy of the Corporation as and when vacancy would be available for him. He is not entitled to any relief, not to talk of regularization in service retrospectively with effect from February 2001.

6. Claimant has examined himself in support of his claim. No witness was examined on behalf of the Corporation. Case was listed for evidence of the Corporation for 31-12-2013, on which date none attended the Tribunal on its behalf. Matter was proceeded under rule 22 of the Industrial Disputes (central) Rules, 1957 and evidence of the Corporation was closed.

7. Arguments were heard at the bar. Shri Surender Bhardwaj, authorized representative, advanced arguments on behalf of the claimant. None came forward on behalf of the Corporation to raise submissions. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows :

8. In affidavit Ex.WW1/A, tendered as evidence, claimant swears that his mother Ms.Patasho Devi was working as a coolie with the Corporation, who expired on 27-01-1999. He applied for his appointment on compassionate grounds. Though he would have been given regular appointment on compassionate grounds, but he was illegally engaged as a daily wager in February 2001 vide letter dated 28.02.2001. He claims that the said action is unwarranted. To appreciate facts testified by the claimant in this regard, it would be in the fitness of things to consider policy of compassionate appointment formulated by the Government of India, which has been adopted by the Corporation.

9. Scheme of compassionate appointment applies to dependent family member-

- (A) of a Government servant who
  - (a) dies while in service (including death by suicide), or
  - (b) is retired on medical grounds under Rule 2 of the CCS (Medical Examination) Rules, 1957, or
  - (c) is retired on medical grounds under Rule 38 of the CCS (Pension) Rules, 1972, or
- (B) of a member of the Armed Forces who-
  - (i) dies during service; or
  - (ii) is killed in action; or
  - (iii) is medically boarded out and is unfit for civil employment

Government servant for the purpose of the scheme means, a Government servant appointed on regular basis and not one working on daily wage or casual or apprentice or ad hoc or contract or re-employment basis.

10. Dependent family members has been advised to mean :

- (a) spouse; or
- (b) son (including adopted son); or
- (c) daughter (including adopted daughter); or
- (d) brother or sister in the case of unmarried Government servant or member of the Armed

Forces referred above, who was wholly dependent on the Government servant/member of the Armed Forces at the time of his death in harness or retirement on medical grounds, as the case may be.

11. Compassionate appointment can be made to Group 'C' or Group 'D' posts against direct recruitment quota. For consideration of application for compassionate appointment family of the Government servant who died in harness or retired on medical grounds should be indigent and deserves immediate assistance for relief from financial destitution and applicant for compassionate appointment should be eligible and suitable for the post in all respects. Compassionate appointments are exempted from observance of :

- (a) Recruitment procedure
- (b) Clearance from the Surplus Cell of the Department of Personnel and Training/Directorate of Employment and Training
- (c) The ban orders on filling of posts issued by the Ministry of Finance (Department of Expenditure)

12. Upper age-limit could be relaxed wherever found to be necessary. The lower age-limit should, however, in no case be relaxed below 18 years of age. Age eligibility is to be determined with reference to the date of application and not the date of appointment. Secretary to the Ministry/Department concerned is competent to relax temporarily educational qualifications as prescribed in the relevant recruitment rules. In case of appointment at the lowest level, that is Group 'D' or LDC post, in exceptional circumstances where the condition of the family is very hard, such relaxation will be permitted up to a period of 2 years beyond which no relaxation of educational qualification will be admissible and services of the person concerned, if still unqualified are liable to be terminated. Where widow is appointed on compassionate ground to a Group 'D' post, she will be exempted from the requirement of possessing the educational qualification prescribed in the relevant rules, provided the duties of the post can be satisfactorily performed by her without possessing such educational qualifications.

13. Appointment on compassionate grounds should be made only on regular basis and that too only, if regular vacancies meant for that purpose are available. Such appointments can be made upto 5% of the vacancies falling under direct recruitment quota in any Group 'C' or 'D' posts. Ceiling of 5% for making compassionate appointment against regular vacancies should not be circumvented by making appointment of dependent family members of Government servant on casual, daily wage, ad hoc, contract basis against regular vacancies. There is no bar in considering him for such appointment if he is eligible as

per the normal rules/orders governing such appointments.

14. Application for compassionate appointment can be considered, if it is made belatedly, say moved after 5 years of the death of the Government servant or so. While considering such belated requests, it should, however, be kept in view that concept of compassionate appointment is largely related to the need for immediate assistance to the family of the Government servant in order to relieve it from economic distress. The very fact that the family has been able to manage somehow all these years should normally be taken as adequate proof that the family had some dependable means of subsistence. So such belated requests call for a great deal of circumspection. Request for compassionate appointment is belated or not may be decided with reference to the date of death or retirement on medical grounds of Government servant and not the age of the applicant at the time of consideration.

15. The person appointed on compassionate grounds under the scheme should give an undertaking in writing that he/she will maintain properly other family members who were dependent on the Government servant and in case it is proved subsequently that the family members are being neglected or are not being maintained properly, his appointment may be terminated forthwith. While considering request for appointment on compassionate grounds, balanced and objective assessment of financial condition of the family is, to be made taking into account its assets and liabilities (including benefits received under various welfare schemes) and all other relevant factors, such as, presence of an earning member, size of the family, age of the children and the essential needs of the family. The whole object of granting compassionate appointment is to enable the family to tide over the sudden crises and to relieve the family from financial destitution and to help it get over the emergency.

16. The Apex court in *G. Anantha Rajeshwara Rao* [1994 (1) SCC 192] had considered the scheme of compassionate appointments formulated by the Government of India and ruled that appointment on grounds of descent clearly violates article 16(2) of the Constitution, but if the appointment is confined to the son or daughter or widow of the Government servant who die in harness, who need immediate appointment on the ground of immediate need of assistance in the event of there being no other earning member in the family to supplement the loss of economies from the bread winner to relieve to distress of the members of the family, it is unexceptionable. Again in *Umesh Kumar Nagpal* [JT 1994 (3) SC 5325] the Apex Court considered the scheme and laid down following principles in that regards :

- (1) Only dependents of an employee dying in harness, leaving his family in penury and without any source of livelihood can be appointed on compassionate grounds.

- (2) The posts in group "C" and "D" are the lowest posts in non managerial and managerial categories and hence those posts alone can be offered on compassionate grounds.
- (3) The whole object of granting compassionate appointments is to enable the family to tide over the crisis and to relieve the family of the deceased from destitution and to help it get over the emergency.
- (4) Offering compassionate appointments as a matter of course, irrespective of financial condition of the family of the deceased or medically retired government servant, is legally impermissible.
- (5) Neither the qualification of the applicant (dependent family member) nor the post held by the deceased or medically retired government servant is relevant. If the applicant finds it below his dignity to accept the post offered, he is free not to accept it. The post is not to be offered to cater his status but to see family through the economic calamity.
- (6) Compassionate appointment cannot be granted after lapse of a reasonable period and it is not a vested right which can be exercised at any time in the future, and
- (7) Compassionate appointment cannot be offered by an individual functionary or an ad hoc basis.

17. In *Asha Ram Chander Ambedker and others* (Jt 1994 (2) SC 183) the Apex Court ruled that the High Courts and Administrative Tribunals cannot give directions for appointment of a person on compassionate ground but can merely direct consideration of the claim for such appointment. In *Dinesh Kumar* (JT 1996 (5) SC 319) and *Smt. A. Radhika Therumalai* (JT 1996 (9) SC 197) it was announced that appointment on compassionate ground can be made only, if a vacancy is available for that purpose. In *Rami Devi and others* (JT 1996 (6) SC 646) it was ruled that if the scheme relating to appointment on compassionate ground is accepted to all-sort of casual, ad hoc employees, including those who are working as apprentice, then the scheme cannot be justified on constitutional grounds.

18. Now coming to facts, the Corporation can offer 5% of posts on compassionate grounds to wards of its deceased employees. Claimant had not been able to project that post was lying vacant which could be offered to him for appointment on compassionate grounds in February 2001. On the other hand, he gave application on 19-01-2001 wherein he conceded that he was willing to be appointed as daily wager beldar. Therefore, out of these facts, it is

emerging over the record that when no regular post was available for appointment of the claimant on compassionate grounds, he accepted his appointment as daily wager beldar, pursuant to policy of the Corporation. By his own conduct, claimant brings it over the record that there was no vacancy available for him in February 2001 for his appointment on compassionate grounds. Since there was no vacancy available for appointment of the claimant on compassionate grounds in February 2001, it does not lie in his mouth to contend that the Corporation ought to have appointed him against a regular post on compassionate grounds.

19. In October 2002, claimant was involved in a criminal case, registered at police station Kanjhawala, Delhi. As testified by him, he served the Corporation upto 17-10-2002. Thereafter he stopped attending to his duties and did not inform the Corporation reasons for his absence from duties. He went to the office of the Corporation thereafter for the first time on 24.10.2007. He submitted his affidavit EX.WW1/M1 wherein he assured the Corporation for not claiming any relief for the intervening period from 18-10-2002 to 25-06-2008. Out of facts, referred above, it emerged over the record that on registration of criminal case against the claimant, he absented from joining his duties.

20. As facts of the controversy project, the claimant absented himself from his duties for a considerable long period in an unauthorized manner. An employee is under an obligation not to absent himself from work without good cause. Absence without leave is misconduct in industrial employment, warranting disciplinary punishment. Habitual absence from duty without leave has been made a misconduct under Model Standing Orders, framed under Industrial Employment Standing Orders Act, 1946. Likewise, industrial employers also include "absence from duty", without leave in the list of misconduct in their standing orders. Sanction of leave can be a significant defence to misconduct of absence without leave. No employee can claim leave of absence as a matter of right and remaining absent without leave will constitute violation of discipline. The fact that the claimant was continuously absent from work without leave, on account of his detention in jail for an offence, will not give an immunity to the claimant and the employer will be justified in discharging him from services, announces the Apex Court in *Burn & Company*, (1959 (1) L.L.J. 450).

21. In *Indian Iron and Steel Company Ltd.* (1958 (1) L.L.J.260) the Apex Court was confronted with a proposition as to whether provisions in the standing orders authorizing the employer to terminate services of its employee on account of absence without leave was an inflexible rule. In that matter seven workmen were absent without leave for 14 consecutive days, as they were in police custody. During police custody they applied for leave which were refused by the company and services of



the workmen were terminated under relevant standing order for remaining absent without leave. The Industrial Tribunal took a view that the relevant standing order was not an inflexible rule and mere application for leave was sufficient to arrest the operation of the standing order. In appeal, though the Labour Appellate Tribunal did not maintain the award of the Tribunal on that count, yet it held that in view of the circumstances that the workmen were in custody, the company was not justified in refusing leave. When the matter reached the Apex Court, it set aside the order of the Labour Appellate Tribunal, relying its precedent in *Burn & Company Ltd.* (supra) and ruled thus :-

"It is true that the arrested men were not in a position to come to their work, because they had been arrested by the police. This may be unfortunate for them, but it would be unjust to hold that in such circumstances the company must always give leave when an application for leave is made. If a large number of workmen are arrested by the authorities in charge of law and order by raising of their questionable activities in connection with a labour dispute (as in this case), the work of the company will be paralysed if the company is forced to give leave to all of them for more or less indefinite period. Such a principle will not be just, nor will it restore harmony between labour and capital or ensure normal flow of production. It is immaterial whether the charges on which the workmen are arrested by the police are ultimately proved or not in a court of law. The company must carry on its work and may find it impossible to do so if a large number of workmen are absent. Whether in such circumstances leave should be granted or not must be left to the discretion of the employer. It may be rightly accepted that if the workmen are arrested at the instance of the company for the purpose of victimization and in order to get rid of them on the ostensible pretext of continued absence, the position will be different. It will then be a colorable or malafide exercise of power under the relevant standing order, that however, is not the case here."

22. Defence open to an employee, against factum of his absence without leave, is that the absence was on account of circumstances beyond his control. For instance, where absence of a workman was on account of his sudden or serious illness or serious illness of a relation that would be an extenuating circumstance which the employer will have to take into consideration. However, if a workman feigns sickness in order to avoid duty by producing a false medical certificate, this would itself be a serious act of misconduct. No such case of absence beyond control has been set up by the claimant, in the present controversy. Claimant failed to perform duties and intentionally remained absent with effect from 17-10-2002 till 24-10-2007.

23. He moved an application for his re-engagement before the Corporation and assured the Corporation that he will not claim any benefit for the intervening period from 18-10-2002 to 25-06-2008, as unfolded in his affidavit EX.WW1/M1. Thus it is evident that the claimant made representation to the effect that no benefit would be claimed by him for the intervening period referred above. question for consideration would be as to whether assurances made in affidavit Ex.WW1/M1 would constitute valid estoppel against him. Following must accrue in order to constitute a valid estoppel by representation :

- (i) That the party to be estopped is the same person, who made the representation.
- (ii) That the case, which the party sought to be stopped, is making or setting up or attempting to prove contradicts in substance original representation.
- (iii) When such original representation was of the nature to induce, and was made with the intention of inducing the party raising the estoppel to alter his position to his detriment.
- (iv) That the party raising the estoppel actually altered its position to its detriment on the faith of such original representation.
- (v) That the original representation was made to the party setting up estoppel or to some person in right of whom he claims.

24. When facts of representation made in EX.WW1/1 are scanned, it came to light that the claimant made a representation to the Corporation to the effect that he will not seek any claim for intervening period from 18-0-2001 to 25-06-2008. He projects a case in contradiction to the representation so made. On his representation, referred above, fresh appointment as dairy wagher beldar was offered to him by the Corporation. Representation was made by the claimant to the Corporation, and it acted upon the same. Thus, all constituents, referred above, have been established here in the case. Claimant is hereby estopped, to project a different case than the representation made by him vide EX.WW1/M1. It does not lie in his mouth to claim any benefit for the period referred above.

25. Claimant was given fresh engagement as daily wagher beldar by the Corporation with effect from 26-06-2008. As projected above, there was no post for the claimant for his appointment on regular basis on compassionate grounds. His fresh engagement nowhere confer any right to him to seek regularization of his services retrospectively with effect from February 2001. He had not set up a case for his regularization after his fresh engagement on 26-06-2008. Therefore it is obvious

that the Corporation was justified in denying regularization of the services of the claimant with retrospective effect with all consequential benefits .

26. Phased manner regularization policy of the Corporation to regularize services of casual employees, appointed on humanitarian grounds, was adopted by the Corporation vide its resolution No.273 dated 27-06-1988. This policy of regularization of such employees in a phased manner does not come to the rescue of the claimant, since he was recently engaged again on 26-6-2008. His case for regularization would be considered by the Corporation as and when vacancy would arise for him. He is not entitled to relief of regularization as claimed for by him. His claim statement deserves dismissal. The same is, accordingly, brushed aside. An award is passed in favour of the Corporation and against the claimant. It be sent to the appropriate Government for publication.

Dated : 09-01-2014

Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 20 जनवरी, 2014

**का.आ. 460.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कमिशनर, म्युनिसिपल कारपोरेशन ऑफ दिल्ली के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. 1, दिल्ली के पंचाट (संदर्भ संख्या 158/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-01-2014 को प्राप्त हुआ था।

[ सं. एल-42012/38/2012-आईआर (डीयू) ]

पी.के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 20 January, 2014

**S.O. 460.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 158/2012) of the Central Government Industrial Tribunal/Labour Court No. 1, Delhi now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of The Commissioner, Municipal Corporation of Delhi and their workman, which was received by the Central Government on 18-01-2014

[No. L-42012/38/2012-IR (DU)]

P. K. VENUGOPAL, Section Officer

#### ANNEXURE

**BEFORE DR. R. K. YADAV, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL  
TRIBUNAL NO. 1, KARKARDOOMA COURTS  
COMPLEX, DELHI**

**I.D. No. 158/2012**

Smt. Meena W/o Sh. Rajesh,  
Through Nagar Nigam Karamchari Sangh,  
Delhi Prades, P-2/624,  
Sultanpuri, New Delhi.

...Workman

#### Versus

The Commissioner,  
Municipal Corporation of Delhi,  
Town Hall, Chandni Chowk,  
Delhi-110006

...Management

#### AWARD

Smt. Meena was engaged as part time safai karamchari by Municipal Corporation of Delhi (in short the Corporation) on consolidated salary of Rs. 560.00 per month. She belaboured under a belief that her services ought to have been regularized with effect from 01-10-2000. She approached the Nagar Nigam Karamchari Sangh, (in short the union) for redressal of her grievances. The union raised a dispute before the Conciliation Officer. Since the claim was contested by the Corporation, hence conciliation proceedings ended into a failure. On consideration of failure report, so submitted by the Conciliation Officer, the appropriate Government referred the dispute to this Tribunal for adjudication, vide order No.L-42012/38/2012-IR(DU) New Delhi dated 08-11-2012 with following terms

"Whether action of the management of Municipal Corporation of Delhi (MCD) in denying regularization of services of Smt. Meena W/o Shri Rajesh from the date she was appointed on compassionate grounds as safai karamchari, i.e. with effect from 01.10.2000 in proper pay scale with all consequential benefits is justified or not? If not, what relief the workman is entitled to and from which date?"

2. In the reference order, the appropriate Government commanded the parties to the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions, so given, Smt.Meene opted not to file her claim statement with the Tribunal.

3. Notice was sent to Ms. Meena by registered post on 03-12-2012, calling upon her to file claim statement before the Tribunal on or before 02-01-2013. This notice was sent to her through the union, at P-2/624, Sultanpuri, Delhi, the address provided by the appropriate Government in order of reference. Neither the claimant nor the union responded to the notice, so sent.

4. Since none came forward on behalf of the claimant to file her claim statement, fresh notice was sent to her by

registered post on 02-01-2013 calling upon her to file claim statement before the Tribunal on 29-01-2013. Notice was again transmitted to the claimant by registered post on 31-01-2013 asking her to file her claim statement on or before 20-02-2013. Lastly, notice dated 22-02-2013 was sent by registered post commanding the claimant to file her claim statement before the Tribunal on or before 22.03.2013. Neither the postal articles, referred above, were received back nor was it observed by the Tribunal that postal services remained affected in the period, referred above. Therefore, every presumption lies in favour of the fact that the above notices were served upon the claimant. Despite service of these notices, claimant opted to abstain away from the proceedings. No claim statement was filed on her behalf.

5. Since onus of the question referred for adjudication was there on the Corporation, it was called upon to file its response to the reference order. Corporation projects that the claim is not maintainable since it has not been espoused by a union or considerable number of workmen. It has further been projected that the dispute is not maintainable on account of laches, since the dispute has been raised after a long gap of 12 years.

6. Arguments were heard at the bar. None came forward on behalf of the claimant to advance arguments. Shri Umesh Gupta, authorized representative, raised submissions on behalf of the corporation. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows :

7. The corporation argues that the dispute has not acquired status of an industrial dispute for want of espousal of the claim by the union or considerable number of the workmen in its establishment. For an answer to this proposition, definition of the term 'Industrial dispute' is to be construed. Section 2(k) of the Industrial Disputes Act, 1947 (in short the Act), defines the term 'industrial dispute', which definition is extracted thus :

"2(k) 'Industrial dispute' means any dispute or difference between employers and employees, or between employers and workmen, or between workmen and workman, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;"

8. The definition of "industrial dispute" referred above, can be divided into four parts; viz. (i) factum of dispute, (2) parties to the dispute, viz. (a) employers and employees, (b) employer and workmen, or (c) workmen and workman, (3) subject matter of the dispute, which should be connected with - (i) employment or non employment, or (ii) terms of employment, or (iii) condition of labour of any person, and (4) it should relate to an "industry".

9. The definition of "industrial dispute" is worded in very wide terms and unless they are narrowed by the meaning given to word "workman" it would seem to include all "employers", all "employments" and all "workmen", whatever the nature or scope of the employment may be. Therefore, except in the case where there can be a dispute between the employers and employees and workmen and workman, one of the parties to an industrial dispute must be an employee or a class of employees. The first point, therefore, to be noted, perhaps self evident, is that the phrase "employer and workmen", the plural may include singular on either side or any permutation of singular or plural, the masculine including the feminine. In order, therefore, to determine as to whether a controversy or difference or a dispute is an 'an industrial dispute' or not, it must first be determined whether the workman concerned or workmen sponsor his cause satisfy the conditions of clause(s) of Section 2 of the Act. Here in the case the Corporation does not dispute status of the claimant to be of a workman within the meaning of section 2(S) of the Act.

10. The Apex Court put gloss on the definition of "industrial dispute" in *Dimakuchi Tea Estate* [1955 (1) LLJ 500] and ruled that the expression "any person" in clause (k) of section 2 of the Act must be read subject to such limitation and qualification as arise from the context, the two crucial limitations are (i) the dispute must be a real dispute between the parties to the dispute (as indicated in the first two parts of the definition clause) so as to be capable of settlement or adjudication by one party to the dispute giving necessary relief to other, and (2) the person regarding whom the dispute is raised must be one for whose employment, non employment, terms of employment or conditions of labour, as case may be, the parties dispute for a direct or substantial interest. Where workman raised a dispute as against their employment, the person regarding whose employment, non employment, terms of employment or conditions of labour, the dispute is raised need not be strictly speaking "workman" within the meaning of the Act, but must be one in whose employment, non employment" terms of employment, or conditions of labour the workmen as a class have a direct or substantial interest. The observations made by the Apex Court are to be extracted thus:

"We also agree with the expression "any person" is not co extensive with any workman, particular or otherwise, equal with other, that the crucial test is one of community of interest and the person regarding whom the dispute is raised must be one in whose employment, non employment, terms of employment, conditions of labour (as the case may be) the parties to the dispute have a direct or substantial interest. Whether such direct or substantial interest has been established in a particular case will depend on its facts and circumstances."

11. In *Kyas Construction Company (Pvt.) Ltd.* [1958 (2) LLJ 660], the Apex Court ruled that an industrial dispute need not be a dispute between the employer and his workman and that the definition of the expression "industrial dispute" is wide enough to cater a dispute raised by the employer's workman with regard to non employment of others, who may not be employed as workman at the relevant time. The Apex Court in *Bombay Union of Journalist* [1961 (11) LLJ 436] has observed that in each case in ascertaining whether an individual dispute has acquired the character of an industrial dispute, the test is whether at the date of reference, the dispute was taken up as submitted by the union of the workmen of the employer against whom, the dispute is raised by an individual workman or by an appreciable number of workmen. In order, therefore, to convert an individual dispute into an industrial dispute, it has to be established that it has been taken up by the union of employees of the establishment or by an appreciable number of the employees of the establishment. As far as union of the workmen of establishment itself is concerned, the problem of espousal by them generally presents little difficulty, since such workmen who are members of such unions generally have a continuity of interest with an individual employee who is one of their fellow workman. But difficulty arise when the cause of a workman in a particular establishment is sponsored by a union which is not of the workmen of that establishment but is one of which membership is open to workmen of their establishment as well as in that industry. In such a case a union which has only microscopic number of the workmen as its member, cannot sponsor any dispute arising between the workmen and the management. A representative character of the union has to be gathered from the strength of the actual number of co workers sponsoring the dispute. The mere fact that a substantial number of workmen of the establishment in which the concerned workman was employee were also members of the union would not constitute sponsorship. It must be shown that they were connected together and arrived at an understanding by a resolution or by other means and collectively submitted the dispute.

12. The expression "industrial disputes" has been construed by the Apex Court to include individual disputes, because of the scheme of the Act. In *Raghu Nath Gopal Patvardhan* [1957(1) LLJ 27] the Apex Court ruled as to what dispute can be called as an industrial dispute. It was laid thereon that (1) a dispute between the employer and a single workman cannot be an industrial dispute, (2) it cannot per se be an industrial dispute but may become if it is taken up by a trade union or a number of workmen. In *Dharampal Prem Chand* [1965 (1) LLJ 668] it was commanded by the Apex Court that a dispute raised by a single workman cannot become an industrial dispute unless

it is supported either by his union or in the absence of a union by substantial number of workmen. Same law was laid in the case of *Indian Express Newspaper (Pvt.) Limited* [1970 (1) LLJ 132]. However in *Western India Match Company* [1970 (II) LLJ 256], the Apex Court referred the precedent in *Dimakuchi Tea Estate's case* [1958 (1) LLJ 500] and ruled that a dispute relating to "any person becomes a dispute where the person in respect of whom it is raised is one in whose employment, non employment, terms of employment or conditions of labour, the parties, dispute for a direct or substantial interest",

13. What a substantial or considerable number of workmen would be in a given case, depend on particular facts of the case. The fact that an "industrial dispute", is supported by other workmen will have to be established either in the form of a resolution of the union of which workman may be member or of the workmen themselves who support the dispute or in any other manner. From the mere fact that a general union, at whose instance an "industrial dispute" concerning an individual workman is referred for adjudication, has on its roll a few of the workmen of the establishment as its members, it cannot be inferred that the individual dispute has been converted into an "industrial dispute". The Tribunal has therefore, to consider the question as to how many of the fellow workman actually espoused the cause of the concerned workman by participating in the particular rescission of the Union. In the absence of a such a determination by the Tribunal, it cannot be said that the individual dispute acquired the character of an industrial dispute and the Tribunal will not acquire jurisdiction to adjudicate upon the dispute. Nevertheless, in order to make a dispute an industrial dispute, it is not necessary that there should always be a resolution of substantial or appreciable number of workmen. What is necessary is that there should be some express or collective will of a substantial or an appreciable member of the workmen treating the cause of the individual workman as their own cause. Law to this effect was laid in *P.Somasundaram* [1970 (I) LLJ 558].

14. It is not necessary that the sponsoring union is a registered trade union or a recognized trade union. Once it is shown that a body of substantial number of workmen either acting through a union or otherwise had sponsored the workman's cause, it is sufficient to convert it into an industrial dispute. In *Pardeep Lamp Works* [1970 (I) LLJ 507] complaints relating to dispute of ten workmen were filed before the Conciliation Officer by the individual workmen themselves. But their case was subsequently taken up by a new union formed by a large number of co workmen, if not a majority of them. Since this union was not registered or recognized, the workmen elected five representatives to prosecute the cases of ten dismissed workmen. Thus cases of the dismissed workmen were espoused by the new union, yet unregistered and unrecognized. The Apex Court held that the fact that these



disputes were not taken up by a registered or recognised union does not mean that they were not "industrial dispute".

15. It is not expedient that same union should remain incharge of that dispute till its adjudication. The dispute may be espoused by the workmen of an establishment, through a particular union for making such a dispute an Industrial dispute", while the workman may be represented before the Tribunal for the purpose of Section 36 of the Act by a member of executive or office bearer of altogether another union. The crux of the matter is that the dispute should be a dispute between the employer and his workmen. It is not necessary that the dispute must be espoused or conducted only by a registered trade union. Even if a trade union ceases to be registered trade union during the continuance of the adjudication proceedings that would not affect the maintainability of the order of reference. Law to this effect was laid by the High Court of Orissa in Gammon India Limited [1974 (II) LLJ 34]. For ascertaining as to whether an individual dispute has acquired character of an individual dispute, the test is whether on the date of the reference the dispute was taken up as supported by the union of the workmen of the employer against whom the dispute is raised by the individual workman or by an appreciable number of the workman. In other words, the validity of the reference of an industrial dispute' must be judged on the facts as they stood on the date of the reference and not necessarily on the date when the cause occurs, reference can be made to a precedent in Western India Match Co.Ltd. [1970 (11) LLJ 256].

16. Here in the case, not even an iota of facts are brought over the record to the effect that the union took up the cause of the claimant as their own. It is also not shown that the members of the union had shown their collective will in favour of the cause of the claimant. Thus it is evident that there is a complete vacuum of facts to the effect that the union espoused the cause of the claimant. Resultantly there is no material to conclude to the effect that the dispute acquired status of an industrial dispute. The reference is liable to be answered against the claimant on that score.

17. The corporation further projects that a stale claim has been made, since it has been raised after a long gap of 12 years. Section 10 (1) of the Act does not prescribe any period of limitation for making reference of the dispute for adjudication. The words 'at any time' used in sub section (1) of Section 10 of the Act, does not admit of any limitation in making an order of reference. Law of limitation, which might bar any Civil Court from giving remedy in respect of lawful rights, cannot be applied by Industrial Tribunals. However, policy of industrial adjudication is that stale claim should not be generally encouraged or allowed unless

there is satisfactory explanation for delay. In Shalimar Works Ltd. [1959 (2) LLJ 26], the Apex Court pointed out that though there is no limitation prescribed in making reference of the dispute to Industrial Tribunal, even so, it is only reasonable that disputes should be referred as soon as possible after having arisen and on failure of conciliation proceedings. In Western India Match Company [1970 (2) LLJ 256] the Apex Court observed that in exercising its discretion, Government will take into account time which has lapsed between its earlier decision and the date when it decides to consider it in the interest of justice and industrial peace to make the reference for adjudication. Same view was taken in Mahabir Jute. Mills Ltd. [1975 (2) LLJ 326]. In Gurmail Singh [2000 (1) LLJ 1080] Industrial Adjudicator dismissed the reference on the ground that there was delay of 8 years in raising the dispute, which delay was condoned by the Apex Court and it was ordered that the workman would not be entitled to any back wages for the period of 8 years but would be entitled to 50% of wages from the date it raised the dispute till the date of his reinstatement. In Prahalad Singh [2000 (2) LLJ 1653], the Apex Court approved the award of the Tribunal in not granting any relief to the workman who preferred the claim after a period of 13 years without any reasonable or justifiable grounds. From above decisions, it can be said that the law relating to delay in raising or reference of dispute is bereft of any principles, which can be easily comprehended by the litigants.

18. Claimant raised the dispute in respect of denial of regularization of services to her in the year 2012. For claim of regularization, it was incumbent upon the claimant to establish that she was appointed by the Corporation with effect from 01-10-2000 against a substantive post. As projected by the Corporation, she was engaged as a part time safai karamchari on a consolidated salary of Rs.560.00 per month in the year 2000 and was doing the work only for four hours per day. She stopped reporting for duties since 26-06-2009. Even otherwise, there is no policy of the Corporation to regularize any part time employee. These factual propositions also disentitle her to relief of regularization of her services.

19. The foregoing reasons make me to conclude that Smt. Meena is not entitled to regularization in the service of the Corporation. Even otherwise an individual dispute cannot be adjudicated upon by the Tribunal. These reasons persuade the Tribunal to refrain its hands from adjudicatory process. No relief can be granted in favour of Smt. Meena. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated : 10-01-2014

Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 20 जनवरी, 2014

**का.आ. 461.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार असिस्टेंट इंजीनियर, आल इंडिया रेडियो, नई दिल्ली के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1ए दिल्ली के पंचाट (संदर्भ संख्या 259/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-1-2014 को प्राप्त हुआ था।

[ सं. एल-42012/42/98-आई आर (डीयू) ]  
पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 20th January, 2014

**S.O. 461.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 259/2011) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the Management of The Assistant Engineer, All India Radio, New Delhi and their workman, which was received by the Central Government on 18-1-2014.

[No. L-42012/42/98-IR (DU)]

P. K. VENUGOPAL, Section Officer

#### ANNEXURE

**BEFORE Dr. R.K. YADAV, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL  
No. 1, KARKARDOOMA COURTS, DELHI**

**I.D. No. 259/2011**

Sh. Dilwan Singh,  
R/o H. No. 288, Block-1,  
Dakshin Puri,  
New Delhi-110062.

... Workman

#### Versus

The Asstt. Engineer (E),  
C.C.W., All India Radio,  
Siri Fort Auditorium,  
New Delhi-110049.

... Management

#### AWARD

During International Films Festival 1992 Directorate of Film Festival awarded projection system operational work to a contractor, who engaged projector operator and film checker to carry out his contractual obligations. Shri Dilwan Singh was engaged as a film checker by the contractor. Specialized job of film projections, which was being supervised by Directorate of Film Festival was handed over to the Civil Construction Wing of All India

Radio (hereinafter referred to as the management) in May 1993. The management also awarded operation of film projection work to a contractor namely M/s. Om Prakash. The claimant, who was earlier engaged by Shri K.M.Sharma, the contractor, was also engaged by M/s Om Prakash, to whom work was awarded by the management. The claimant worked as a film checker, as an employee of the contractor till 30-8-97, the date when a theft took place at Shri Fort Auditorium, where film projection work was being performed by the contractor. When complainant was made to the contractor in that regard, he allegedly dispensed with the services of the claimant. Aggrieved by that act the claimant raised a demand for reinstatement in service of the management, since by then steps were being taken to create a post of film checker in its establishment. Demand of the claimant was declined. He raised a dispute before the Conciliation Officer. Since his claim was contested by the management conciliation proceedings ended into a failure. On consideration of failure report, submitted by the Conciliation Officer, the appropriate Government referred the dispute to this Tribunal for adjudication, vide order No. L-42012/42/98-I(DU), New Delhi dated 10-9-1998, with following terms :

“Whether the action of the management of CCW/ AIR in dismissing the services of Shri Dilwan Singh, Film Checker w.e.f. 28-8-97 and in not regularizing his services w.e.f. 20-12-92 is legal and justified? If not, what relief the workman is entitled to ?”

2. Claim statement was filed by Shri Dilwan Singh pleading that he was working as a film checker for the management since 01-06-1993 at Siri Fort Auditorium. New Delhi. He was paid his wages at the rate of Rs. 60 per day. He was appointed by Assistant Engineer(E) of the management. He assured that his services would be made permanent. Prior to his engagement on 1-6-93, he worked as a film checker from 20-12-92 to 31-5-93 in Directorate of Film Festival, Ministry of Information and Broadcastig, Govt. of India, New Delhi. The Assistant Engineer used to assign and supervise his work. He used to mark his attendance in a register maintained by the management. His wages were paid at the end of every English calendar month. No leaves of any nature was given to him. No provident fund was deducted. He was not paid any bonus. He was paid overtime wages, when made to work beyond eight hours a day. His appointment was against a permanent post. He rendered continuous service with management till 31-8-97. After termination of his services, one Ranjeet Singh appointed in his place.

3. The claimant pleads that he is a matriculate and acquired good experience as a film checker. The management had issued experience certificate in his favour. he filed an application before Central Administrative Tribunal (in short the CAT) for absorption of his services. His petition was disposed off vide order dated 13-5-97.

Though he was eligible for ad-hoc bonus but it was not paid to him. He was entitled of same pay as paid to regular employees of the management. No notice or pay in lieu thereof and retrenchment compensation was given to him. Action of terminating his services is in violation of the provisions of section 25-F of the Industrial Disputes Act 1947 (in short the Act.) Principals of “First come last go” was not followed. Fresh appointment was made in violation of the provisions of section 25-G and 25-H of the Act and rules 76 to 78 of the Industrial Dispute (Central) Rules 1957. He claims reinstatement in service with continuity and full back wages.

4. Claim was demurred by the management pleading that only the appropriate Govt. has the authority to abolish contract labour system. No Court or Tribunal can abolish or ban a genuine contract labour system. It has further been pleaded that the claimant was engaged by M/s. Om Prakash, a contractor, under whose direct control he was working. The management never paid his wages. It has been disputed that duties were assigned and supervised by an Assistant Engineer of the management. It is wrong to assert that there was any permanent vacancy for the post of film checker with the management. The contractor used to take duties from the claimant. Application filed by the claimant before the CAT for his regularization came to be dismissed. The claimant was neither engaged nor his services were dispensed with by the management. His claim statement deserve dismissal being devoid of merits, pleads the management.

5. Vide order No. Z-22019/6/2007-IR(C-II) New Delhi dated 11th February, 2008 the case was transferred to the Central Government Industrial Tribunal No. 2, New Delhi, for adjudication by the appropriate Government. It was retransferred to this Tribunal for adjudication, vide order No. Z-22019/6/2007-IR(C-II), New Delhi, dated 30-03-2011 by the appropriate Government.

6. Claimant examined himself in support of his claim. Shri Murari Lal, Executive Engineer, was examined by the management to fend facts. No other witness was examined by either of the parties.

7. Arguments were heard at the bar. Shri B.L. Gupta, authorized representative, advanced arguments on behalf of the claimant Shri A.P. Gupta, authorized representative raised his submissions on behalf of the management. Written submissions were also filed on behalf of the claimant. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the records. My findings on issues involved in the controversy are as follows.

8. In order to appreciate facts testified by rival parties affidavit Ex. WW1/A, tendered as evidence by the claimant, the affidavit Ex. MW1/A, tendered as evidence by Shri Murari Lal, are scanned besides document proved by them.

In affidavit Ex. MW1/A the claimant reproduced those very facts which were pleaded by him in his claim statement. Shri Murari Lal projects a version of awarding work to a contractor and the claimant being an employee of the contractor. Therefore it becomes expedient to appreciate rival facts in the light of documents proved over the record. The claimant has proved experience certificate Ex. WW1/1, issued by Junior Engineer (Electrical) of the management. In Ex. WW1/1 periods for which the claimant worked as a film checker at Siri Fort Auditorium has been detailed. It has been specified therein that the claimant worked there through M/s. Om Prakash. It emerges out of Ex. WW1/1 that the claimant was an employee of the contractor. The claimant has also proved his duty pass as Ex. WW1/7, original of which was taken over the record as Ex. WW1/8. This duty pass projects him to be an employee of the contractor. Therefore these two documents, on which the claimant bases his claim, project him to be an employee of the contractor. Edifice of the claimant has been demolished by these two documents itself. Superstructure of his case trumbled down when these two documents were brought over the record.

9. No evidence at all was brought over the record by the claimant to establish that his wages were ever paid by the management. Attendance register Ex. WW1/M2 to Ex. WW1/M8 were confronted to him. In none of these register his name appears as an employee of the management. No appointment letter or any document projecting him to be an employee of the contractor has been brought over the record. Bald statement of the claimant, to the effect that he was an employee of the management, gets no support from any documentary evidence brought over the record by the claimant or the management. There is a complete vacuum of evidence to record a finding to the effect that the claimant was an employee of the management. I am constrained to conclude that the claimant was an employee of the contractor, who unsuccessfully attempted to claim himself to be an employee of the management.

10. No document was brought over the record to the effect that there was an occasion with the management to terminate his services. When claimant was an employee of the contractor, the management was not in a position to dispense with his services. Under these circumstances it cannot be said that the management acted in any manner and terminated his services. No question to assess legality and justifiability of action of the management, in terminating service of the claimant, would arise at all. Under these circumstances the claimant could not establish any claim against the management.

11. Whether the claimant, who was an employee of the contractor, can maintain a dispute against the management? For an answer to this proposition, the Tribunal has to take note of the law contained in section 10 of the Contract Labour (Regulation and Abolition) Act,

1970 (in short the Contract Labour Act), which makes provision for prohibition of employment of contract labour. For sake of convenience provisions of section 10 of the Contract Labour Act are reproduced thus :

“10. Prohibition of employment of contract labour :

- (1) Notwithstanding anything contained in this Act, the appropriate Government may, after consultation with the Central Board or, as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment.
- (2) Before issuing any notification under sub-section (1) in relation to an establishment, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors, such as :
  - (a) whether the process, operation or other work is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment,
  - (b) whether it is of perennial nature, that is to say, it is of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment;
  - (c) whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto;
  - (d) whether it is sufficient to employ considerable number of whole-time workmen.

**Explanation :** — If a question arises whether any process or operation or other work in other work is of perennial nature, the decision of the appropriate Government thereon shall be final.”

12. As emerges out of the provisions of sub-section (1) of section 10 of the Contract Labour Act, the appropriate Government may, by notification in the Official Gazette, prohibit employment of contract labour in any process, operation or other work in any establishment. Whether employment of contract labour is prohibited, by issuance of a notification in Official Gazette by the appropriate Government, what would be the status of the contract labour employed in the establishment? Such a question arose before the Apex Court in Steel Authority of India Ltd. (2001(7) S.C.C.1). The Apex Court ruled therein that there cannot be automatic absorption of contract labour

by principal employer on issuance of notification by the appropriate Government on abolition of contract labour system, under sub-section (1) of Section 10 of the Contract Labour Act. It would be expedient to reproduce the law laid by the Apex Court, which is extended thus :

“..... they fall in three classes : (1) where contract labour is engaged in or in connection with the work of an establishment and employment of contract labour is prohibited either because the industrial adjudication/court ordered abolition of contract labour or because the appropriate Government issued notification under section 10(1) of the CLRA act, no automatic absorption of contract labour working in the establishment was ordered, (2) where contract was found to be a sham and nominal, rather a camouflage, in which case the contract labour working in the establishment of the principal employer were held, in fact and in reality, the employees of the principal employer himself. Indeed such cases do not relate to the abolition of contract labour but present instances wherein the court pierce the veil and declared the correct position as a fact at the stage after employment of contract labour stood prohibited, (3) where in discharge of a statutory obligation of maintaining a canteen in an establishment the principal employer availed the services of the contractor, the courts have held that the contract labour would indeed be employees of the principal employer.”

13. The Court ruled that neither section 10 of the Contract Labour Act nor any other provision in that Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuance of a notification by the appropriate Government under sub-section (1) of section 10, prohibiting employment of contract labour, in any process operation or other work in any establishment. Consequently the principal employer cannot be required to order for absorption of the contract labour working in the establishment concerned. It was further ruled therein that in *Saraspur Mills case* [1974 (3) SCC 66], the workman engaged for working in the canteen run by the Cooperative Society for the appellant were the employees of the appellant mills. In *Basti Sugar Mills* (AIR 1964 S.C. 355) a canteen was run in the factory by the Cooperative Society and as such the workers working in the canteen were held to be employees of the establishment. The Apex Court ruled that these cases fall in class (3) mentioned above. Judgment in *Hussainbhai* [1978 Lab. I.C. 1264] was considered by the Apex Court in the said precedent and it was ruled therein that the said precedent falls in class (2), referred above. The Apex Court concluded that on issuance of prohibitive notification under section 10 of the Contract Labour Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard



to conditions of service, the Industrial Adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislation so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the establishment concerned, subject to the conditions as may be specified by it for that purpose.

14. As announced by the Apex Court, on issuance of a prohibitive notification, prohibiting employment of contract labour or otherwise in any industrial dispute brought before it by the contract labour in regard to conditions of his service, the industrial adjudicator will have to consider the question whether the contractor has interposed either on the ground of having undertaken to produce any given result in the establishment or for supply of the contract labour for the work of the establishment under a genuine contract or it is a mere ruse/camouflage to evade compliance of beneficial legislation so as to deprive the workers of the benefits therein. Thus it was ruled that a contract labour can raise a dispute before the industrial adjudicator in regard to his conditions of service and in case the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer. Also see *Standard Vacuum Refining Co. of India Ltd.* [1960 (II) LLJ. 233], which was referred with approval in *Steel Authority of India*.

15. In *Shivanandan Sharma* [1955 (1) LLJ 688], the respondent Bank entrusted its Cash Department under a contract to the Treasurers who appointed cashiers, including the appellant Head Cashier. The question before the Apex Court was : was the appellant an employee of the Bank ? On construction of the agreement entered into the Bank and the Treasure, the Court laid down :

“If a master employs a servant and authorizes him to employ a number of persons to do a particular job and to guarantee their fidelity and efficiency for a cash consideration, the employees thus appointed by the servant would be equally with the employer, servant of the master.”

In the above precedent the Apex Court for the first time laid down the crucial test of supervision and control for determining the relationship of employer and employee.

16. In *Hussainbhai* (supra) the petitioner, who was manufacturing ropes, entrusted the work to a contractor who engaged his own workers. When, after some time, the

the workers were not engaged, they raised an industrial dispute that they were denied employment by the petitioner. On reference of that dispute, the labour court passed an award against the petitioner. When matter reached the Apex Court, on examination of various factors and applying the effective control test, it was held that though there was no direct relationship between the petitioner and the workers yet on lifting the veil and looking at the conspectus of actors governing employment, the naked truth, though draped in different perfect paper arrangement, was that the real employer was the petitioner, not the immediate contractor. The Apex Court stated law in following words :

“Where a worker of a group of workers labours to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer. He has economic control over the workers’ subsistence, skill, and continued employment. If he, for any reason, chokes off, the worker is, virtually, laid off. The presence of intermediate contractor with whom alone the workers have immediate or direct relationship ex-contractu is of no consequence when, on lifting the veil or looking at the conspectus of factors governing employment, we discern the naked truth, though draped in different perfect paper arrangement, that the real employer is the management, not the immediate contractor\*\*\*. If the livelihood of the workmen substantially depends on labour rendered to produce goods and services for the benefit and satisfaction of an enterprise, the absence of direct relationship or the presence of dubious intermediaries or the make-believe trappings of detachment from the management cannot snap the real-life bond. The story may vary but the interference defies ingenuity. The liability cannot be shaken off. Of course, if there is total dissociation in fact between the disowning management and the aggrieved workmen, the employment is, in substance and real-life terms, by another. The management’s adventitious connections cannot ripen into real employment.”

As noted above, this precedent does not present an illustration of abolition of contract labour but an instance where the Court pierced the veil and declared the correct position to the effect that the contract labours were employees of the principal employer and not of the contractor.

17. In *Steel Authority of India* (supra) it has been ruled that the term “contract labour” is a species of workman. A workman may be hired : (1) in an establishment by the principal employer or by his agent with or without the knowledge of the principal employer, or (2) in connection with the work of an establishment by the principal employer through a contractor or by a contractor with or without the knowledge of principal employer. Where a workman is hired

in or in connection with the work of an establishment by the principal employer through a contractor, he merely acts as an agent so there will be master and servant relationship between the principal employer and the workman. But when a workman is hired in or in connection with the work of an establishment by a contractor, either because he has undertaken to produce a given result for the establishment or because he supplies workmen for any work of the establishment, a question might arise whether the contractor is a mere camouflage as in Hussainbhai's case (supra) and in Indian Petrochemicals Corporation case (1999 (6) S.C.C. 439) etc.; if the answer is in affirmative, the workman will be in fact an employee of the principal employer, but if the answer is in the negative, the workman will be a contract labour.

In view of the legal proposition, referred above, it is concluded that the claimant can maintain this dispute against the management since he agitates that the contract agreement between the management and the Contractor is sham and nominal.

18. Whether any directions for deeming the contract labour as having become the employees of the principal employer can be issued, when the contractor or the principal employer had violated the provisions of the Contract Labour Act ? To find an answer, provisions of that Act are to be examined. The Contract Labour Act regulates conditions of workers in contract labour system and provides for its abolition by the appropriate Government as provided by section 10 of that Act. In regard to regulatory measures section 7 required the principal employer to get itself registered, while section 12 obliges every contractor to obtain a licence, under the provisions of that Act. Section 9 places an embargo on the principal employer of an establishment from employing contractor labour in the establishment when either it is not registered or its registration has been revoked. Section 12 of the Contract Labour Act imposes a liability on a contractor not to undertake or execute any work through contract labour except under and in accordance with a licence. Sections 23, 24 and 25 make contraventions of the provisions of that Act or Rules made thereunder penal. In Dena Nath (1992 Lab. I.C. 75) the Apex Court considered the question, whether non-compliance of the provisions of sections 7 and 12 by the principal employer and the contractor respectively would make the contract labour employed by the principal employer as the employee of the latter. It was ruled that only consequence of non-compliance either by the principal employer of section 7 or by the contractor in complying the provisions of section 12 is that they are liable for prosecution under the said Act. But the employees employed through the contractor cannot be deemed to be the employees of the principal employer.

19. In the Steel Authority of India (supra) the Apex Court laid emphasis “..... the consequence of violation of

Section 7 and 12 of the CLRA Act is explicitly provided in Section 23 and 25 of the CLRA Act, it is not for the High Courts or this Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Section 23 and 25 a different sequel, be it absorption of contract labour in the establishment of principal employer or a lesser or harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principal of ironing out the creases and the scope of interpretative legislation and as such, clearly impermissible.” The above authoritative pronouncements make it clear that on violations of the provisions of the Contract Labour Act or Rules made thereunder, the contract labour could not be deemed to have become the employee of the principal employer.

20. Whether this Tribunal has power to order for abolition of contract labour system in the establishment of the management ? For an answer, legal dicta is to be considered. Before enactment of the Contract Labour Act, the industrial adjudicator, in appropriate cases, used to issue directions to the establishment concerned to abolish or modify system of contract labour. Reference can be made to precedents in United Salt Works and Industries Ltd. (1962 (I) LLJ. 131), Shibu Metal works (1996 (I) LLJ. 717), National Iron & Steel Co. (1967 (II) LLJ. 23) and Ghage and Patil (Transport) Pvt. Ltd. (1968 (I) LLJ. 566). The National Commission on Labour (1966) in para 29.11 of its report, enumerated those factors, on which abolition of contract labour was ordered, thus :

“29.11. Judicial awards have discouraged the practice of employment of contract labour, particularly when the work is (i) perennial and must go on from day to day; (ii) incidental and necessary for the work of the factory; (iii) sufficient to employ a considerable number of whole time workmen; and (iv) being done in most concerns through regular workmen. These awards also came out against the system of the ‘middlemen’.”

21. After Contract Labour Act was brought on statute book, the Apex examined jurisdiction of the industrial adjudicator to issue directions to the establishment to abolish contract labour in Vegoils Private Ltd. (1971 (2) S.C.C. 724) and ruled that it would be proper that the question, whether the contract labour in the appellant industry was to be abolished or not, be left to be dealt with by the appropriate Government under the provisions of that Act, if it becomes necessary. The observations made by the Court are extracted thus :

“The appropriate Government when taking action under Section 10 will have an overall picture of the industries carrying on similar activities and decide whether contract labour is to be abolished in respect of any of the activities of that industry. Therefore, it is reasonable to conclude that the jurisdiction to

decide about the abolition of contract Labour, or to put it differently, to prohibit the employment of contract labour, is now to be done in accordance with Section 10. Therefore, it is proper that the question whether the contract labour regarding loading and unloading in the industry of the appellant is to be abolished or not, is left to be dealt with by the appropriate Government under the Act, if it becomes necessary. On this ground, we are of the opinion that the direction of the Industrial Tribunal in this regard will have to be set aside. \*\*\*. The legality of the direction given by the Industrial Tribunal abolishing contract labour in respect of loading and unloading from May 1, 1971, can also be considered from another point of view. The Central Act, as mentioned earlier, had come into force on February 10, 1971. Under Section 10 of the said Act the jurisdiction to decide matters connected with prohibition of contract labour is now vested in the appropriate Government. Therefore, with effect from February 10, 1971, it is only the appropriate Government that can prohibit contract labour by following the procedure and in accordance with the provisions of the Central Act. The Industrial Tribunal, in the circumstances, will have no jurisdiction, through its award dated November 20, 1970, to give a direction in that respect which becomes enforceable after the date of the coming into force of the Central Act. In any event, such a direction contained in the award cannot be enforceable from a date when abolition of contract labour can only be done by the appropriate Government in accordance with the provisions of the Central Act.”

22. In *Gujarat Electricity Board (1955(5) S.C.C. 27)* the same view was taken by the Apex Court holding that the authority to abolish the contract labour vests in the appropriate Government and not in any court including the industrial adjudicator. It would be apposite to reproduce the observation of the Court thus :

“53. Our conclusions and answers to the questions raised are, therefore, as follows :

- (i) In view of the provisions of Section 10 of the Act, it is only the appropriate Government which has the authority to abolish genuine labour contract in accordance with the provisions of the said Section. No Court including the industrial adjudicator has jurisdiction to do so.
- (ii) If the contract is sham or not genuine, the workmen of the so-called contractor can raise an industrial dispute for declaring that they were always the employees of the principal employer and for claiming the appropriate service conditions. When such dispute is raised, it is not a dispute for abolition of the labour contract

and hence the provisions of Section 10 of the Act will not bar either the raising or the adjudication of the dispute. When such dispute is raised, the industrial adjudicator has to decide whether the contract is sham or genuine. It is only if the adjudicator comes to the conclusion that the contract is sham, that he will have jurisdiction to adjudicate the dispute. If, however, he comes to the conclusion that the contract is genuine, he may refer the workmen to the appropriate Government for abolition of the contract labour under Section 10 of the Act and keep the dispute pending. However, he can do so if the dispute is espoused by the direct workmen of the principal employer. If the workmen of the principal employer have not espoused the dispute, the adjudicator, after coming to the conclusion that the contract is genuine, has to reject the reference, the dispute being not an industrial dispute within the meaning of Section 2(k) of the ID Act. He will not be competent to give any relief to the workmen of the erstwhile contractor even if the labour contract is abolished by the appropriate Government under Section 10 of the Act.

- (iii) If the labour contract is genuine a composite industrial dispute can still be raised for abolition of the contract labour and their absorption. However, the dispute will have to be raised invariably by the direct employees of the principal employer. The industrial adjudicator, after receipt of the reference of such dispute will have first to direct the workmen to approach the appropriate Government for abolition of the contract labour under Section 10 of the Act and keep the reference pending. If pursuant to such reference, the contract labour is abolished by the appropriate Government, the industrial adjudicator will have to give opportunity to the parties to place the necessary material before him to decide whether the workmen of the erstwhile contractor should be directed to be absorbed by the principal employer, how many of them and on what terms. If, however, the contract labour is not abolished, the industrial adjudicator has to reject the reference.
- (iv) Even after the contract labour system is abolished, the direct employees of the principal employer can raise an industrial dispute for absorption of the ex-contractor's workmen and the adjudicator on the material placed before him can decide as to who and how many of the workmen should be absorbed and on what terms.”

23. In Steel Authority of India (supra) the Apex Court had referred the precedents in Vegoils case (supra) and Gujrat Electricity Board (supra) with approval. Thus it emerges that power to abolish contract labour system vests with the appropriate Government, under section 10 of the Contract Labour Act, and not with any court including the industrial adjudicator. This Tribunal has not been saddled with any responsibility to abolish contract labour in an establishment, on parameters enacted in sub-section (2) of section 10 of the Contract Labour Act.

24. In order to assess as to whether the claimant could establish a case that agreement entered into between the management and the contractor was sham and nominal, evidence is again looked into. The claimant nowhere claims himself to be an employee of the contractor and questions genuineness of the contract agreement. His thrust of contention has been to the effect that he is a direct employee of the management. The claimant never requested the Tribunal to command the management to produce contract agreement entered into between the contractor and the management. Since the claimant never questioned the contract agreement nor attempted to set up such a claim, the Tribunal never thought it expedient to call the management to produce contract agreements for appreciation of facts detailed therein. During the course of arguments a vague assertion was made in that regard. The claimant has miserably failed to establish that administrative, managerial, supervisory, financial and disciplinary control was exercised over him by the management. In such a situation there is no case to raise an eyebrow against the contract agreements entered into between the management and the contractor.

25. In view of reasons detailed above claim put forward by the claimant fails. He has no case for reinstatement in service of the management. His claim is discarded, being untenable. An award is passed in favour of the management and against the claimant. It be sent to the appropriate Govt. for publication.

Dated : 3-1-2014 Dr. R.K. YADAV, Presiding Officer

नई दिल्ली, 20 जनवरी, 2014

**का.आ. 462.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डिप्टी सुपरिन्टेन्डेन्ट हॉर्टिकुलचरिस्ट आर्कियोलॉजिकल सर्वे ऑफ़ इंडिया भुवनेश्वर के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 27/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-1-2014 को प्राप्त हुआ था।

[सं. एल-42012/227/2011-आई आर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 20th January, 2014

**S.O. 462.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 27/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar now as shown in the Annexure in the Industrial Dispute between the employers in relation to the Management of Dy. Superintendent Horticulturist, Archaeological Survey of India, Bhubaneswar and their workman, which was received by the Central Government on 18-1-2014.

[No. L-42011/227/2011-IR (DU)]

P. K. VENUGOPAL, Section Officer

#### ANNEXURE

#### CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

#### Present :

Shri J. Srivastava,  
Presiding Officer, C.G.I.T.-cum-Labour Court,  
Bhubaneswar.

#### Industrial Dispute Case No. 27/2013

No. L-42011/227/2011-IR (DU), dated 18-3-2013

#### Date of Passing Order—8th October, 2013

#### Between :

The Dy. Superintendent Horticulturist,  
Archaeological Survey of India,  
Bhubaneswar Circle,  
Block-VI, Toshali Apartment,  
Satyanagar,

Bhubaneswar (Orissa) ...1st Party-Management

AND

The President,  
Archaeological Survey of India  
Workers Union,  
Plot No. 32, Ashok Nagar,  
Bhubaneswar, (Orissa)

...2nd Party-Union.

#### Appearances :

None ...For the 1st Party-Management

None ...For the 2nd Party-Union

#### ORDER

Case taken up. None of the parties is present. The 2nd Party Union has not filed any statement of claim despite sending notice on 29-5-2013 through ordinary post and on 17-7-2013 through registered post. On the last date the 2nd Party-Union had prayed for time acceding to which it was given one month's time to file statement of claim. But the time has expired on 5-10-2013 and no statement of claim has been filed.



2. Under these circumstances, it appears that the 2nd Party-Union is not interested in contesting the case by filing the statement of claim, though a period of more than five months has expired. It might be that the dispute has been amicably settled with the 1st Party-Management. Therefore there is no use to keep the case pending indefinitely and the reference is liable to be decided by way of passing a no-dispute award.

3. According a no dispute award is passed and the reference is answered on the above terms.

Dictated & Corrected by me.

JITENDRA SRIVASTAVA, Presiding Officer

नई दिल्ली, 20 जनवरी, 2014

**का.आ. 463.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डिप्टी सुपरिन्टेन्डेंट आर्कियोलॉजिकल सर्वे ऑफ इंडिया, भुवनेश्वर के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 26/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-1-2014 को प्राप्त हुआ था।

[सं. एल-42011/181/2012-आई आर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 20th January, 2014

**S.O. 463.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 26/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar now as shown in the Annexure in the Industrial Dispute between the employers in relation to the Management of Deputy Superintendent, Archaeological Survey of India, Bhubaneswar and their workman, which was received by the Central Government on 18-1-2014.

[No. L-42011/181/2012-IR (DU)]

P. K. VENUGOPAL, Section Officer

#### ANNEXURE

#### CENTRAL GOVERNMENT INDUSTRIAL, TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

#### Present :

Shri J. Srivastava,  
Presiding Officer, C.G.I.T.-cum-Labour Court,  
Bhubaneswar.

#### Industrial Dispute Case No. 26/2013

No. L-42011/181/2012-IR (DU), dated 7-3-2013

**Date of Passing Order—17th December, 2013**

#### Between :

The Dy. Superintendent,  
Archaeological Survey of India,  
Horticulture Division,  
Bhubanesar Circle,  
Block-VI, Toshali Apartment,  
Satyanagar,  
Bhubaneswar (Orissa) ...1st Party-Management

#### AND

The President,  
Archaeological Survey of India  
Workers Union,  
Plot No. 32, Ashok Nagar,  
Bhubaneswar, (Orissa) ...2nd Party-Union

#### Appearances :

None ...For the 1st Party-Management

None ...For the 2nd Party-Union

#### ORDER

Case taken up. Parties are absent. Statement of claim has not yet been filed by the 2nd Party-Union.

2. The reference was received in this Tribunal on 5-4-2013. The 2nd Party-Union has to file the statement of claim within fifteen days from the date of receipt of the order of reference, but till date no statement of claim has been filed, though notice to the 2nd Party-Union was issued twice, first on 28-5-2013 through ordinary post and the second on 11-7-2013 through regd. post. In response to the notice issued on 11-7-2013 the Vice President of the 2nd Party Union appeared on 20-8-2013 and moved a time petition on which time was allowed to the 2nd Party-Union for filing statement of claim by 24-10-2013, but on the date fixed neither any person from the side of the 2nd Party-Union appeared nor filed any statement of claim. Hence it seems that the 2nd Party-Union has either settled the dispute amicably with the 1st Party-Management out of the court or is not interested in pursuing the case.

3. In view of the above there is no use to keep the case pending indefinitely and the case is to be disposed of by passing a no-dispute award.

4. Accordingly a no-dispute award is passed.

5. Reference is answered on the above terms.

Dictated & Corrected by me.

JITENDRA SRIVASTAVA, Presiding Officer

नई दिल्ली, 20 जनवरी, 2014

**का.आ. 464.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डायरेक्टर मलेरिया रिसर्च सेंटर दिल्ली के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 30/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-1-2014 को प्राप्त हुआ था।

[सं. एल-42012/26/2006-आई आर (डीयू)]  
पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 20th January, 2014

**S.O. 464.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 30/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar now as shown in the Annexure in the Industrial Dispute between the employers in relation to the Management of Director, Malaria Research Centre, Delhi and their workman, which was received by the Central Government on 18-1-2014.

[No. L-42011/26/2006-IR (DU)]

P. K. VENUGOPAL, Section Officer

#### ANNEXURE

#### CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

#### Present :

Shri J. Srivastava,  
Presiding Officer, C.G.I.T.-cum-Labour Court,  
Bhubaneswar.

#### Industrial Dispute Case No. 30/2006

Date of Passing Award—7th October, 2013

#### Between :

The Director,  
Malaria Research Centre,  
22, Sham Nath Marg,  
Delhi-110 054

... 1st Party-Management.

#### AND

The General Secretary,  
Malaria Research Centre Project  
Employee's Association,  
Sector-5,  
Distt. Sundargarh (Orissa),  
Rourkela

... 2nd Party-Union.

#### Appearances :

Dr. S.K. Sharma, For the 1st Party  
Officer, In-charge Management

Mr. Sanatan Biswal, For the 2nd Party-Union.  
Jt. Secretary.

#### AWARD

An Industrial Dispute existing between the employers in relation to the Management of Malaria Research Centre,

and their workmen has been referred by the Government of India in the Ministry of Labour vide its Letter No. L-42011/26/2006-IR(DU), dated 6-10-2006 to this Tribunal in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act in respect of the following matter :

Whether the demand of the Malaria Research Centre Project Employees Association for merger of 50% of Dearness Allowance/Dearness Relief with basic pay, in pursuance of the Ministry of Finance O.M. No. 105/1/2004-IC dated 26-5-2004, for employees/workers of the Centre, is legal and justified? If yes, to what relief the concerned workmen are entitled to and for which date ?

2. The 2nd Party Union espousing the cause of the workmen filed its statement of claim in which it has been alleged that the 1st Party Management is an unit of Indian Council of Medical Research (ICMR), an autonomous body an has been established by the Government of India with the sole purpose of findign out ways and means to control malaria in the country. The service conditions of the workmen are guided by the bye-laws framed by the Government of India. The Government of India has framed fundamental and supplementary rules and further issued such other Rules and Orders from time to time which apply mutatis mutandis to the employees of the 1st Party Management. The 2nd Party-workmen, though they are called temporary workmen by the 1st Party Management have been performing the job under the long term Integrated Disease Vector Control (IDVC) Project perennially. They have been working for the last twenty years wihtout any break in their service and are entitled to Dearness Allowance, House Rent Allowance, City Compensatory Allowance and Travelling Allowance as per Government of India instructions. Until 1-4-2004 they were enjoying these benefits as per recommendations of the 5th Pay Commssion like their counter-parts in the permanent roll of the 1st Party Management. The 1st Party-Management has employed temporary workmen and classified them into three categories : (a) those who are fitted into scale of pay, (ii) those who are getting consolidated wage and (c) those who are casual workers receiving wages on daily rate basis with reference to the minimum of the pay scales for corresponding Group-D officials. The 2nd Party-workmen belong to 1st and 2nd category of workers mentioned above. On 1-4-2004 the 1st Party Management discriminated in the matter of revision of dearness allowance etc. for the temporary employees as compared to permanent employees and did not merge 50% of dearness allowance admissible on the existing basic pay with the basic pay as per O.M. No. 105/1/2004-IC, dated 6-5-2004 issued by the Ministry of Finance, Government of India in respect of the so-called temporary employees for the reasons best known to the Management. But surprisingly this facility was allowed to the daily wage workers in the temporary roll of

the 1st Party-Management. By not merging the 50% of dearness allowance with basic pay and paying dearness allowance at a rate different from the rate of the Central Government, the 1st Party Management has violated the orders of the Government of India, though they were entitled to get their pay revised as per the recommendations of the 5th Pay Commission approved by the Central Government. This action of the 1st party Management has created discontentment among the workmen as they started getting less salary as compared to their counter-parts in the permanent roll ranging from Rs. 700 to Rs. 2000 per month. This is arbitrary and illegal and the practice being followed cannot be changed to the detriment to the workmen without any compelling reasons. The 1st Party management has also violated the provisions of Section 9(A) of the Industrial Disputes Act, 1947 as no notice was issued to them prior to withdrawal of privileges enjoyed by the 2nd Party workmen. The 2nd Party Workmen by writing letters dated 1-6-2004 and 9-8-2004 requested the 1st Party Management to consider their case of merger of 50% dearness allowance with the basic pay and also endorsed a copy to the Government of India, Ministry of Health and Family Welfare, but nothing was done. Hence an industrial dispute was raised before the Regional Labour Commissioner (Central), Rourkela on which conciliation proceedings were taken up, but they ended in failure. Hence this reference was made to this Tribunal. The 2nd Party Union has prayed for merger of 50% of dearness allowance with basic pay in pursuance of the Ministry of Finance O.M. No. 105/1/2004-IC, dated 26-5-2004 and for payment of arrear of wages with interest with effect from 1-4-2004.

3. The 1st Party Management in its written statement has replied that the Regional Medical Research Centre, Bhubaneswar, which is a sister concern of NIMR under the control of ICMR, New Delhi is not an “industry” as defined under section 2(j) of the Industrial Disputes Act, 1947 as it is entirely a non-commercial organization engaged in research activities. Therefore this Tribunal does not have any jurisdiction to entertain the present reference. The 2nd Party-workmen are engaged in long term extramural project namely Integrated Disease Vector Control Project on Temporary basis. The terms of engagement order/letter are very clear that their engagement is coterminus with the said project. Being project employees, they are not in the regular establishment of the ICMR and therefore they cannot be equated with regular employees of the establishment of ICMR and are not entitled to the benefits which are admissible to the regular employees of ICMR/ Central Government. The principal of “equal pay for equal work” is not applicable to where there are two separate categories and in such a case the Management is authorized to take a decision regarding the pay scale and make a difference with regard to payments, such as merger of 50% dearness allowance with basic pay to regular employees of the Council and between those employees working in extramural time bound project. The payment of dearness

allowance on the basic pay is not part of the salary and the Management is well within its power to fix the various parameters regarding the grant of dearness allowance or merger of dearness allowance with basic salary for different categories of the staff. The 2nd Party workmen are not entitled to parity with the Central Government employees and there is no arbitrariness or illegality on the part of the Management. There is also no violation of any constitutional provision. The claim petition is liable to be dismissed.

4. On the pleadings of the parties the following issues were framed:

### ISSUES

1. Whether the reference is maintainable ?
2. Whether the establishment of the Malaria Research is an Industry within the definition of the term ?
3. Whether the action of the Management in merging 50% of the D.A./Dearness Relief with the basic pay, in pursuance of the Ministry of Finance O.M. No. 105/1/2004-IC dated 26-5-2004 for employees/workers of the Centre, is legal and justified?
4. If not what relief the disputants are entitled ?
5. On behalf of the 2nd Party Union its General Secretary Shri Prasanna Kumar Behera has filed his sworn affidavit in evidence on which opportunity to cross examination was given to the 1st Party Management. The 2nd Party Union has relied on several documents marked as Ext. 1 to 32.
6. The 1st Party Management has examined Dr. Surya Kanta Sharma in evidence and has filed photostatic copy of Award given by the Industrial Tribunal, Bhubaneswar in I.D. Misc. Case No. 43/98(c) as annexure to its written statement.

### FINDINGS

#### ISSUE No. 1 and 2

7. These two issues are co-related and inter-dependant. Hence they are taken up together for convenience sake.

8. The 1st Party Management has challenged the maintainability of the reference on the ground that the establishment of Malaria Research is not an “industry” within the meaning of “industry” as defined under the Industrial Disputes Act as it is a non-commercial organization engaged in the research activities. Since both the issues are based on the same plea they are dealt with together. To support its contention the 1st Party Management has relied on certain rulings. First of all it has cited the case of “Central Agricultural Research Institute

& another-Versus-Presiding Officer, Labour Court and Others (1998 LAB I.C. 1490) in which the Hon'ble Calcutta High Court has held that Central Agricultural Research Institute (CARI) is not an Industry and does not come within the purview of the Act. Therefore reference of matter relating to CARI for adjudication under the Act is without jurisdiction. The three other cases relied on by the 1st Party Management are of courts of concurrent jurisdiction. The three cases are (i) Tr. I.D. Case No. 148/2001, The Management of the Director, Regional Research Laboratory Bhubaneswar and their workmen represented through General Secretary, Regional Research Laboratory Workers Union, Bhubaneswar, (ii) I.D. Case No. 1/2005. The Management of the Director Institute of Minerals and Materials Technology, Bhubaneswar and their workmen Shri Akshaya Kumar Gochhayat and others, and (iii) I.D. Misc. Case No. 43/98 (C) The Management of Regional Medical Research Centre, Indian Council of Medical Research, Bhubaneswar and their workman Shri D. Jagannath Rao, Chandrasekharapur, Bhubaneswar. In all these three cases a categorical finding has been given by the Presiding Officers of the Tribunal that the Regional Research Laboratory, Institute of Minerals and Materials Technology and Regional Medical Research Centre are not an "Industry". Hence Malaria Research Centre a sister concern under the Indian Council of Medical Research is not an Industry within the meaning of Section 2(j) of the Industrial Disputes Act and therefore the present reference is not maintainable.

9. The word "industry" as defined under section 2(j) of the Industrial Disputes Act, 1947 does mean any systematic activity carried on by co-operation between an employer and his workmen (whether such workmen are employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature), whether or not,

- (i) any capital has been invested for the purpose of carrying on such activity; or
- (ii) such activity is carried on with a motive to make any gain or profit.

10. There are certain exceptions, which excludes some particular activities from the term "industry". These exceptions are enumerated as number (1) to (9) in the definition of "Industry". One of such exceptions is enumerated at serial number (3) which excludes any activity relating to educational, scientific, research or training institutions from the term "Industry".

11. The contention of the 1st Party Management is that the establishment of Malaria Research Centre is engaged in research activities and does not indulge in any commercial or business activity. Therefore, it cannot be called as "Industry". The Hon'ble High Court of Calcutta

in the case of Central Agricultural Research Institute and another-versus-Presiding Officer, Labour Court and others (1998 LAB I.C. 1490) has held that :

"The difference between the guidelines laid down by the supreme Court and the restructured definition of "industry" as introduced by legislative amendment is that under the Supreme Court guidelines the triple tests determining the status of an activity bring within its sweep even a research institute as "industry" if it satisfies those triple tests, but in the legislatively restructured definition of "industry" while these triple tests have been accepted for determining the status, yet an unqualified exception has been made inter alia in favour of research institute even if such research institute satisfies the triple tests. This difference will have to be borne in mind while examining the question as to whether an entity or an activity is an "industry" in the light of the present definition of the term in Section 2(j) as it stands after the amendment introduced by the Parliament after the Supreme Court decision in Bangalore Water Supply. The result is that after the amendment a research institute will be outside the scope of the definition of "industry" in Section 2(j) even if it satisfies the triple tests laid down by the Supreme Court and adopted in the amended definition of Section 2(j). Consequently once it is found-as it has been- that CARI is a research institute it will be outside the definition of "industry" even if it satisfies the triple tests".

12. At the same parlance the Malaria Research Centre, which is working under the National Institute of Malaria Research being basically and functionally a research institute cannot be placed under the definition of an "industry".

13. The three cases relied upon by the 1st Party-Management as referred to above decided by the Industrial Tribunals, though have not any binding effect on this Tribunal have ruled the same view as the management in these cases were a research organization basically and prominently dealing with research work.

14. The 2nd Party-Union has filed certain documents, namely Exts. 2/1, 2/2, 3, 4 and 5 to show that financial assistance to the 1st Party-Management was provided by certain agencies meaning thereby that the 1st Party-Management is engaged in commercial activities. But these documents do not help in proving this contention. The financial assistance seems to have been provided by these agencies in the project sponsored by them. This has been amply explained by W.W.-1 Shri Prasanna Kumar Behera in his statement before the court. The ruling cited by the 2nd Party-Union namely "Bangalore Water Supply and Sewerage Board-versus-A. Rajappa & others (AIR 1978 SC 969)" has been elaborately dealt with and distinguished



in the case of "Central Agricultural Research Institute and another-versus-Presiding Officer, Labour Court and Others (1998 LAB I.C. 1490)" by the Hon'ble Calcutta High Court on the basis of amended definition of "industry" as per Section 2(j) of the Industrial Disputes Act, 1947.

15. In view of the discussions held above, I come to the conclusion that the 1st Party-Management does not come within the definition of "Industry". Therefore the reference is not maintainable before this Tribunal. Accordingly both the issues number 1 and 2 are decided in the negative.

#### ISSUE No. 3 & 4

16. Since the reference is not maintainable in this Tribunal/Labour Court, this Tribunal/Labour Court being benefit of jurisdiction cannot proceed further to decide these two issues for lack of authority.

17. Reference is answered accordingly.

Dictated & Corrected by me.

JITENDRA SRIVASTAVA, Presiding Officer

नई दिल्ली, 21 जनवरी, 2014

**का.आ. 465.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एतद्द्वारा मनेजर, हैडक्वार्टर दिल्ली एरिया प्रिंटिंग प्रेस, नई दिल्ली के प्रबंधन के संबंध निर्योजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, दिल्ली के पंचाट (संदर्भ संख्या 246/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-1-2014 को प्राप्त हुआ था।

[सं. एल-14012/12/96-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 21st January, 2014

**S.O. 465.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 246/2011) of the Central Government Industrial Tribunal/Labour Court No. 1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the Management of The Manager, Headquarter Delhi Area Printing Press, New Delhi and their workman, which was received by the Central Government on 18-1-2014.

[No. L-14012/12/96-IR (DU)]

P. K. VENUGOPAL, Section Officer

#### ANNEXURE

**BEFORE DR. R.K. YADAV, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL  
No. 1, KARKARDOOMA COURTS, DELHI**

**I.D. No. 246/2011**

Sh. Inder Narain deceased through  
His legal representatives  
C/o Rajya Mazdoor Sabha,  
RZ 15-A/1, Gali No. 3,  
Main Sagarapur,  
New Delhi-110046

... Workman

#### Versus

The Manager,  
Headquarter Delhi Area Printing Press,  
Civil Lines, Delhi Cantt.  
New Delhi-110010

... Management

#### AWARD

"Troops Welfare Oriented" regimental setup was commissioned by the Headquarters Delhi Area (Army) in the year 1984 with the name "Headquarters Delhi Area Printing Press" (hereinafter referred to as the Printing Press). The Printing Press functions to undertake printing jobs as listed below:

- (a) To provide prompt and reasonably priced printing facility primarily to the Military Units and servicemen/ex-service personnel in Delhi Cantt. as well as to those located outside Delhi.
- (b) To provide rehabilitation training to junior commissioned officers/other ranks proceeding on pension establishment or release within a year or two.
- (c) To generate funds for Army Wives Welfare Association (AWWA) to be utilized for the welfare of servicemen and other families.

2. The organization of the Printing Press consists of a patron, a chairman, press manager and machine supervisor, who all are serving officers, junior commissioned officers and jawans of Headquarters Delhi Area. Besides these functionaries, civil work force of the Printing Press consists of offset machine man, machine man letter press, compositor, MOI operator/computer operator and binder. Additional work force is engaged by the Printing Press purely on temporary and casual basis. The additional work force does not form part of its sanctioned strength. One Shri Inder Narain was engaged as machine man, offset printing press in April 1987 by the Printing Press, as additional work force. He worked with the Printing Press till 16-2-95. On that date he allegedly misbehaved with the Manager, Printing Press. He threatened to damage and tamper with the offset machine so that it would not be functional any longer. On a complaint of the Manager, a count of enquiry was constituted. On consideration of report of the court of enquiry, his services were terminated w.e.f. 6-3-95. Shri Inder Narain assailed the said action before the Conciliation Officer. The Printing Press contested his claim, hence conciliation proceedings ended into a failure consideration of failure report, submitted

by the Conciliation Officer the appropriate Govt. referred the dispute to this Tribunal for adjudication, vide order No. L-14012/12/96- IR(DU) New Delhi, 9th/11th April, 1997 with following terms:

"Whether the action of the management of Hqrs. Delhi Area Printing Press in terminating the services of Sh. Inder Narain w.e.f. 6.3.95 is legal and justified? If not, what relief the workman is entitled to?"

3. Claim statement was filed by Shri Inder Narain pleading that he was employed with the Printing Press as machine man since April 1987. He was not given legal facilities such as appointment letters, identify card, increment, bonus, E.S.I. and other facilities, as applicable to employees of the Central Govt. He alongwith his colleagues formed an association. Under his leadership demands were raised on the Printing Press for the facilities referred above. Several correspondences were made with the Printing Press in that regard, but to no avail. On 6.3.95, when he went to resume his duties he was not allowed to enter premises of the Printing Press by the security guard. Before that day his signatures were obtained on blank papers projecting that it were required to regularize his services. Those papers were misused by the Printing Press. Thus by restraining him from entering the premises of the Printing Press, his services were terminated.

4. On 19-4-95 he raised a demand before the Conciliation Officer. The Printing Press submitted its written statement projecting therein that his services were dismissed for a misconduct, after holding a domestic enquiry. The claim made by the Printing Press was false. His services were terminated without giving any notice or pay in lieu thereof and retrenchment compensation. The Printing Press has violated provisions of section 25-F of the Industrial Disputes Act 1947 (hereinafter referred to as the Act). He claims reinstatement in service of the Printing Press with continuity and full-back wages.

5. Claim was demurred by the Printing Press pleading that it is an institution run on charitable lines. The Printing Press carries out regal functions hence it is not an industry. The civil work force cannot be employed on permanent basis since the Printing Press, being part of the Head Quarters Delhi Area, can be closed at any point of time when upon for operational deployment. The Printing Press caters primarily to printing needs of Army Units, its personnel and Ex-servicemen in and around Delhi. Organisation of the Printing Press is in the nature of in house management.

6. The Printing Press presents that the claimant was working purely on daily wages, hence not entitled to any benefit similar to Central Govt. employees. The claimant was involved in anti management activities. During the course of his engagement, he misbehaved with the Manager and Officers of the Printing Press on several

occasions. He was repeatedly warned. He tendered written apologies for his misconducts. On 16.2.95 he committed misconduct, when he misbehaved with the Manager, threatened to damage the machines and incited others for collective disobedience. A court of enquiry was constituted to enquire into the incidents of his misconduct. On the basis of recommendations of the court of enquiry, the claimant was found to be an undesirable workman. His dismissal was approved on 21.2.95. Thus he was dismissed for his misconduct. He is not entitled to any relief muchless relief of reinstatement in service with continuity and full back wages.

7. Vide order No. H-11026/1/2003-IR(C-II) New Delhi, dated 5.12.2003, the case was transferred to the Central Govt. Industrial Tribunal No.2, New Delhi for adjudication by the appropriate Govt.

8. Vide order No. Z-22019/6/2007-IR(C-II) New Delhi, dated 30-3-2011, the case was retransferred to this Tribunal for adjudication by the appropriate Govt.

9. During the course of adjudication claimant expired on 14-5-2009. His wife, namely, Smt. Pushpa, besides other legal representatives, were substituted for the deceased claimant.

10. On perusal of pleadings following issues were settled :

- (i) Whether enquiry conducted by the management was fair and proper?
- (ii) Whether punishment awarded to the deceased claimant was proportionate to his misconduct?
- (iii) As in terms of reference.
- (iv) Relief.

11. Issue No.1 was treated as preliminary issue.

12. Nayab Subedar Fuman Singh was examined by the Printing Press to discharge its onus. Legal representative of deceased workmen opted not to examine any witness to project facts on the preliminary issue.

13. On hearing the parties and appreciating testimony of Nayab Subedar Fuman Singh, besides material placed on record, preliminary issue was answered against the Printing Press and in favour of the claimant, vide order dated 10-10-2011.

14. The Printing Press examined Col. S.S. Sharma, Sub. G. Devasahayam, Col. Ravi Patharia and Lt. Col. P.L. Gupta to prove misconduct of the claimant. Shri Gopal Singh, Shri Kamal Narain and Smt. Pushpa entered the witness box to rebut the evidence adduced by the Printing Press. No other witness was examined by either of the parties.

15. Arguments were heard at the bar. Shri A.K. Pandey, authorized representative, advanced arguments

on behalf of the claimant. Shri Iqbal Shamshi, authorized representative, raised submissions on behalf of the Printing Press. I have given my careful considerations to the arguments advanced by the parties and cautiously perused the records. My findings on issues involved in the controversy are as follows.

### Issue No. 2

16. Col. Ravi Pathania unfolds that there were various complaints against Shri Inder Naryan who was working in the Printing Press in the year 1995. Court of enquiry was ordered against Shri Inder Narain. Lt. Col. P.L. Gupta reaffirms facts in this regard and deposed that he conducted an enquiry against Shri Inder Narain. He recorded statements of Shri Babar Ali, Shri Gopal Singh, Shri Daulat Ram, Shri Kamal Narain and Shri Inder Narain, which statements are Ex.MW1/5 to Ex.MW1/10 respectively. He recorded his findings which are Ex.MW5/1. He also made his recommendations which are Ex.MW1/11. When Ex.MW5/1 is perused, it came to light that these findings were recorded by Lt. Col. Gupta, on behalf of court of enquiry. Statement of the witnesses, referred above, make it apparent that court of enquiry conducted a fact finding enquiry. Recommendations EX.MW1/11 highlights that Col. Gupta recommended disciplinary action against the claimant. Though statement of the claimant was recorded in order to obtain his explanation in the court of enquiry but no opportunity was given to him to cross examine the aforesaid witnesses. These facts make it apparent that the court of enquiry had not taken any step ahead of a fact finding body. Lt. Col. Patharia claims to have tendered show cause notice EX.MW1/12 to the claimant, who refused to accept the same. Thereafter services of the claimant were dispensed with. Show cause notice EX.MW1/12 is not in the form of a charge sheet. It is crystal clear that neither a charge sheet was served nor an enquiry was conducted against the claimant. It was a case of no enquiry at all.

17. The Apex Court in catena of precedents, in parallel to reference cases under section 10 of the Act, has ruled that even under section 33 of the Act, where employer had held no enquiry or the domestic enquiry held by him is found to be vitiated by the Tribunal, the right of the employer to justify action of discharge or dismissal taken by him against the delinquent workman by adducing relevant evidence, for the first time before the Authority is well recognized. Reference can be made to the precedents in Bharat Sugar Mills Ltd. [1961(11) LLJ 644], Ritz Theatre (Pvt.) Ltd. [1962 (11) LLJ 498], P.H.Kalyani [1963 (I) LLJ 679], Motipur Sugar Factory (Pvt.) Ltd. [1965 (11) LLJ 162] Jitendra Chandrakar [1971 (I) LLJ 543], Ganesh Dutt [1972 (I) LLJ 172], Firestone Tyre & Rubber Company of India (Pvt.) Ltd. [1973 (I) LLJ 278], Bhagubhai Balubhai Patel (supra), Britania Biscuit Company Ltd. [1977(1) LLJ 197] and K.M. Dev [1985 Lab.IC. 254]. Likewise right of the

workman to lead evidence contra has been recognized. In such cases the entire matter is open before the Authority, which will have jurisdiction not only to go into the limited question of validity of the enquiry and the bonafides of the employer but also to satisfy itself, on facts before it, whether the action was justified. In other words, in such situation jurisdiction of the Authority is not confined to prima facie examination of the employer's action and the Authority can come to his own conclusion on consideration of evidence adduced before it. Reference can be made to the precedent in Motipur Sugar Factory Pvt. Ltd. (supra), Firestone Tyre and Rubber Company of India Ltd. (supra) and Radio and Electricals Manufacturing Company Ltd. [1978 (11) LLJ 131]. Thus it is crystal clear that in case of no enquiry, the Printing Press has a right to establish misconduct of the claimant before this Tribunal.

18. In order to prove misconduct, the Printing Press has examined witnesses, referred above. Now their depositions are to be appreciated. Col. S.S.Sharma deposed that in Feb. 1995 he was working as General Staff Officer in Delhi Area. On 21.2.1995 he was called by Col. R.K. Patharia in his office. Shri Inder Narain was present in, the office of Col. Patharia. Col. Patharia told him that Shri Inder Narain refused to accept show cause notice. In his presence also, Shri Inder Narain refused to accept show cause notice when Col. Patharia asked him to accept the same. These facts, were got typed on show cause notice Ex.MW1/12 and he signed it at point A. Signature of Col. Patharia are there at point Band C of the said notice. Col. Ravi Patharia also reaffirms those very facts. He details that since there were written complaints against Shri Inder Narain a court of enquiry was ordered against him. He gave his opinion as chairman court of enquiry, which opinion is Ex.MW1/13. When he tried to serve show cause notice, Shri Inder Narain refused to accept it. Out of these facts it is crystal clear that these two witnesses speak of refusal of Shri Inder Narain to accept show cause notice. These two witnesses nowhere depose any fact relating to commission of misconduct, in respect of which show cause notice was being served on Shri Inder Narain. Hence their depositions nowhere espouse cause of the Printing Press. As noted above Col. Gupta conducted court of enquiry and speaks facts relating to it only. He doesn't talk of the events relating to commission of acts of misconduct by the claimant. Hence his testimony is also of no avail to the Printing Press.

19. With a view to bring guilt home, Sub. G. Devasahayam was brought in the witness box. He unfolds that he was posted as Manager, Printing Press from 1987/1988 to 1997. Shri Inder Narain was working in the press during that period. In conversation as well as duties relating to his work Shri Inder Narain used to create a little bit problems for him. He unfolds that on 15.2.95 Shri Inder Narain was on leave. On that day he got printing work done from his assistant. On 16.2.95 he came on duty and questioned him as to who had worked on machine in



his absence. He was told that on account of exigencies, machine was got operated from his assistant. Shri Inder Narain questioned him as to why he got machine operated in his absence. Shri Inder Narain abused him. He ordered Shri Inder Narain not to go to machine room. Shri Inder Narain went to binding section and brought Shri Kamal Narain along with him. Both of them scolded him. Shri Inder Narain made all employees to leave their job and took them away of printing press premises. When he went to machine room he found one of its roller coming out of it. He reported these facts to the Chairman, vide his report Ex.MW1/3, which bears his signature at point A. Thereafter Shri Inder Narain did not report for his duties for 5-6 days. His signature appears at point D on Ex.MW1/12. Shri Inder Narain reported for his duties after 10-12 days of issuance of Ex.MW1/12 and gave an apology letter written in Hindi. He told him that he was not competent to take him on job. Shri Inder Narain went to the office of Lt. Col. P.L. Gupta and thereafter never reported in the Printing Press.

20. To rebut facts unfolded by Sub.G.Devasahayam, Shri Gopal Singh Swears in affidavit Ex.WW1/A that the claimant never wasted any stationery nor tried to tamper with the printing machine in his presence. It was the Printing Press authorities who tried to instigate workers against Shri Inder Narain. His signatures as well as signatures of Shri Inder Narain were taken on blank papers. As emerge out of his testimony, he tried to speak in defence of the claimant relating to the incident of refusal of the latter to accept show cause notice. Refusal to accept show cause notice was not part of the misconduct for which the claimant was dismissed. Shri Gopal Singh tried to speak that the claimant had not argued with Sub. G.Devasahayam in his presence. As testified by Sub. G.Devasahayam, Gopal Singh was not present when series of misconduct were committed. These facts were not dispelled at all, when Sub. G.Devashayam faced rigors of cross-examination. Above facts make it clear that testimony of Gopal Singh is not relevant to that controversy, except that Gopal Singh also left his work place on the instigation of the claimant.

21. Shri Kamal Narain also speaks those very facts as unfolded by Shri Gopal Singh. He further details that no altercation took place between him and Shri G. Devasahayam. This witness had not came out with the facts which occurred in his presence till he was bade farewell by the Printing Press for medical incapacity to work. Thus it is evident that his long silence to speak the truth tell volumes about veracity of facts unfolded by him. After his removal from service he had a motive to speak against the Printing Press. On the other hand he admits that when incident occurred he was employed in the press. Thus it became evident that an incident occurred in which Shri Inder Narain was involved but Shri Kamal Narain opted not to unfold facts relating to that incident. When Kamal Narain opted to conceal facts, his testimony came under clouds. His conduct of being selective in detailing facts

make him unworthy of credence. It emerges out of the record that Shri Kamal Narain tried to detail facts to tilt story in favour of the claimant. He did so with oblique motive. Hence his testimony is discarded being farther from truth.

22. Smt. Pushpa, the widow of the deceased, tried to depose facts, which she claims to have gathered from her deceased husband. When her affidavit Ex.MW3/A is scanned, it came to light that Smt.Pushpa want to detail a story with a view to grind her axe. There is no grain of truth in events which she tried to unfold. Hearsay version, unfolded by her, does not get support from any documentary or ocular facts. She tried to tell lies, when documents, on which signature of her deceased husband appears, were put to her for confirmation. She denied signatures of Shri Inder Narain on Ex.MW1/1, Ex.MW1/2, Ex.MW1/10 and Ex.MW1/14. These documents project facts against her deceased husband. She also denied signature of the claimant appearing on the claim statement. These facts project that Smt.Pushpa wants to speak convenient facts only. Even otherwise she was not a witness to the occurrence. She doesn't speak that incident relating to 16.2.95 was narrated to her by her husband. These facts make her deposition bereft of relevancy and veracity.

23. Facts unfolded by Sub. G. .Devasahayam remain unassailed, when his testimony was purified by an ordeal of cross examination. No challenge was made to his testimony to the effect that on 16.2.95 Shri Inder Narain questioned him as to who operated machine in his absence, that is, on 15.2.95. No eyebrows were raised to the testimony to the effect that when Shri Inder Narain was informed that machine was got operated in his absence from his assistant then he questioned the witness as to why he got it operated in his absence. No attempts were made to assail his testimony to the effect that Shri Inder Narain abused the witness. The witness was not at all questioned to improbabilize facts to the effect that thereafter Inder Narain went in binding section, came again along with Shri Kamal Narain and both of them scolded the witness. No hue and cry was raised on the proposition that Shri Inder Narain made all the employees to leave their work place and took them away from the premises of the Printing Press. All these facts remained unassailed. An unassailed testimony is accepted as true, unless it is found contrary to natural course of events, ordinary human behaviour and tenets of veracity. These factors make it apparent that facts unfolded by Sub. G. .Devasahayam remained uncontroverted. When his testimony was assessed on acid test of behavioral probabilities and veracity I could not notice any infirmity or defect in the same. Testimony of Sub. G. Devasahayam is found worth reliable. His testimony gets corroboration from complaint Ex.MW1/3, which was promptly made by him. Thus it came to light that on 16.2.95 the claimant questioned authority of the Manager, Printing Press when he got machine operated in absence of the claimant. He not



only abused Sub. G. Devasahayam but scolded him along with Shri Kamal Narain. He tampered with the machine and instigated other workers to leave their job and took them away from their workplace.

24. Whether above acts of the claimant constitute misconduct, as defined in the standing order of the Printing Press. For an answer I have to scan terms and conditions of engagement of casual labour engaged in the Printing Press. The standing orders detailed those conditions as follows:

"The Printing Press staff will be appointed on the following terms and conditions :-

- (a) H Q Delhi Area when called upon to assume operational responsibility in the event of active hostilities, low intensity conflicts or aid to civil power, would be required to wind up the Printing Press. As such civilian workmen cannot be permanently employed. The civilian workmen will be kept on probation for 89 days" and on having found suitable by the management will be engaged on temporary basis for 2 years. This period of 2 years may be extended on the request of the workman, for a period of further 2 years or more. The total service permissible is upto the age of 60 years. He is required to fill up a prescribed form as per Appex 'B'. Antecedents of such persons will be verified from the police. They will be required to furnish two sureties and cash security of Rs.1000.
- (b) In normal circumstances only 9 workmen will be employed on temporary basis on monthly wages. However, in the interest of the Organisation, additional workmen may be employed over and above 9 but such addition workers will be on roll as a casual labourers only.
- (c) The selection of candidates for engagement in the Printing Press will be made by a Board of Officers comprising of Chairman as President, the OIC, Printing Press and the Press Manager. The work is of a nature, where some semi-skilled persons with relevant experience may also be engaged. Preference of selection will be given to ex-servicemen. If an ex-serviceman does not meet the QR, civilian candidates meeting the QR may be considered.
- (d) The services is liable to be terminated on grounds of misconduct. In an offence of a misconduct as given in the succeeding sub-sub paras, a civilian workman is liable to be removed from the service is found guilty in a Court of Inquiry so ordered by the Chairman.

The domestic Court of Inquiry under an officer nominated for the purpose by the Chairman of the Press will give full opportunity to the worker to explain his stand. The Chairman will make his judgement and order the punishment as deemed fit which will be binding on the worker. The accused may apply for appeal before the Patron, if he wishes to do so. A show cause notice may not be served in such case where individual is found to be resorting to misconduct repeatedly as an habit. However, in all other cases, the show cause notice of minimum 7 days will be necessary."

25. Following acts have been coined as misconduct by the standing orders;

- “(i) Willful insubordination or disobedience, whether or not in combination with another, of any lawful and reasonable order of a superior.
- (ii) Going on an illegal strike or inciting, abetting or instigating or acting in furtherance thereof.
- (iii) Willful slowing down in performance of work, or abetment, or instigation thereof.
- (iv) Threatening the management staff with dire consequences.
- (v) Theft, fraud, misappropriation or dishonesty in connection with the Press business or property.
- (vi) Habitual absence without leave, over staying the sanctioned leave without sufficient grounds, or proper and satisfactory explanation or habitual late attendance.
- (vii) Commission of any act subversive of discipline or good behavior on the premises of Press, such as, drunkenness, gambling or meeting without prior permission of the management or taking or giving bribe or any illegal gratification whatsoever.
- (viii) Habitual neglect of work or gross or habitual negligence.
- (ix) Threatening to damage the property of the Press including machines.
- (x) Willful damage to work in progress or to any property or the Press.
- (xi) Disclosing to any unauthorized person any information of the printing work which may come in the possession of the staff in the course of his duty".

26. Now question for consideration would be as to whether facts unfolded by Sub. G. Devasahayam could establish misconduct committed by the claimant enumerated

in the standing orders applicable to the Printing Press. Shri Devasahyam deposed that the claimant questioned him as to who had worked on machine in his absence on 15.2.95. He details that when he was told that the machine was got operated from his assistant in exigencies, the claimant abused him. The claimant also retorted that he ought not have got the machine operated in his absence. Out of these facts, referred above, it emerges over the record that the claimant was insulting and insubordinate to such a degree as to be incompatible with the continuance of relationship of master and servant. He not only questions authority of the Manager, Printing Press, when the latter got operated machine in absence of the claimant but give abuses and scolds to him. Thus Sub. G. Devasahyam could project it that the claimant willfully exhibited feelings of insubordination towards him. He challenges authority of the Manager and make him feel little by way of using abusive language and scolding him along with Shri Kamal Narain. I have no hesitation to conclude that the claimant exhibited willful insubordination towards the Manager, Printing Press and portrayed a conduct that he will not follow reasonable orders, as and when the latter would get machine operated, in his absence in exigencies. From above acts the claimant displayed his insulting behavior towards his superior. Authority of the superior was undermined by him, without any reasonable excuse.

27. Sub. G. Devasahyam ordered him not to visit machine room. At that juncture the claimant went in binding section and approached Sub. G. Devasahyam again along with Shri Kamal Narain. They scolded the Manager, Printing Press, at that time. Thus claimant not only used his lung power to brow beat his superior but by his gestures also tried to overawe him. These facts bring it over the record that the claimant threatened the Manager, Printing Press of dire consequences. The claimant tried to create a scene with a view to show his upmanship and humble down the Manager. This threatening posture, actions and behavior of the claimant also constitute a serious misconduct.

28. Sub. G. Devashayam further deposes that the claimant made other workers to leave their job and took them away from the premises of the Printing Press. It emerges out that the claimant instigated other employees to leave their work place and made them to assemble outside the premises of the Printing Press. This act of the claimant brings it over the record that he wanted the other employees to go on illegal strike and with that idea he instigated them to leave their duties and assemble outside their work place.

29. Sub. G. Devashayam deposes that when he went inside machine room next day he found roller of the machine coming out of it. This fact is to be appreciated in the lights of the circumstances that despite directions of the Manager, Printing Press, the claimant went in to machine room and tampered with it to make it non-functional. Thus it is apparent that the claimant tried to tamper with the

machine to make it unusable. Action of the claimant to make the machine unusable bring it to the light that he was so annoyed by the act of getting offset machine operated in his absence that he wanted to bring it in unworkable state. These facts crystallises that the claimant tempered the offset machine, with a view to cause damage to it.

30. Above acts constitute misconduct of willful insubordination of lawful and reasonable orders of the Manager, Printing Press, instigating other workers to go on illegal strike, threatening the Manager, Printing Press with dire consequences and to cause damage to the property of the Printing Press, as enumerated in the standing orders, applicable to the Printing Press. The above misconducts are acts which are subversive of discipline amongst employees of the Printing Press. The misconducts, committed by the claimant are of grave nature, which make the claimant unworthy of employment. These misconducts entail penal consequences also. Therefore it is concluded that the misconducts, committed by the claimant are of grave concern.

31. What should be the appropriate punishment, which can be awarded to the claimant, is a proposition which would be addressed to by this Tribunal? Right of an employer to inflict punishment of discharge or dismissal is not unfettered. The punishment imposed must commensurate with gravity of the misconduct, proved against the delinquent workman. Prior to enactment of section 11-A of the Industrial Disputes Act, 1947 (in short the Act), it was not open to the industrial adjudicator to vary the order of punishment on finding that the order of dismissal was too severe and was not commiserative with the act of misconduct. In other words, the industrial adjudicator could not interfere with the punishment as it was not required to consider propriety or adequacy of punishment or whether it was excessive or too severe. Apex Court, in this connection, had, however, laid down in *Bengal Bhatdee Coal Company* [1963 (1) LLJ 291] that where order of punishment was shockingly disproportionate with the act of the misconduct which no reasonable employer would impose in like circumstances, that itself would lead to the inference of victimization or unfair labour practice which would vitiate order of dismissal or discharge. But by enacting the provisions of section 11-A of the Act, the Legislature has transferred the discretion of the employer, in imposing punishment, to the industrial adjudicator. It is now the satisfaction of the industrial adjudicator to finally decide the quantum of punishment for proved acts of misconduct, in cases of discharge or dismissal. If the Tribunal is satisfied that the order of discharge or dismissal is not justified in any circumstances on the facts of a case, it has the power not only to set aside order of punishment and direct reinstatement with back wages, but it has also the power to impose certain conditions as it may deem fit and also to give relief to the workman, including award of lesser punishment in lieu of discharge or dismissal.

32. It is established law that imposing punishment for a proved act of misconduct is a matter for the punishing authority to decide and normally it should not be interfered with by the Industrial Tribunals. The Tribunal is not required to consider the propriety or adequacy of punishment. But where the punishment is shockingly disproportionate, regard being had to the particular conduct and past record, or is such as no reasonable employer would ever impose in like circumstance, the Tribunal may treat the imposition of such punishment as itself showing victimization or unfair labour practice. Law to this effect was laid by the Apex Court in *Hind Construction and Engineering Company, Ltd.* [1965 (I) LLJ 462]. Likewise in *Management of the Federation of Indian Chambers of Commerce and Industry* [1971 (II) LLJ 630] the Apex Court ruled that the employer made a mountain out of a mole hill and had blown a trivial matter into one involving loss of prestige and reputation and as such punishment of dismissal was held to be unwarranted. In *Ram Kishan* [1996 (I) LLJ 982] the delinquent employee was dismissed from service for using abusive language against a superior officer. On the facts and in the circumstances of the case, the Apex Court held that the punishment of dismissal was harsh and disproportionate to the gravity of the charge imputed to the delinquent. It was ruled therein, "when abusive language is used by anybody against a superior, it must be understood in the environment in which that person is situated and the circumstances surrounding the event that led to the use of abusive language. No straight-jacket formula could be evolved in adjudicating whether the abusive language in the given circumstances would warrant dismissal from service. Each case has to be considered on its own facts"

33. In *B.M.Patil* [1996 (II) LLJ 536], Justice Mohan Kumar of Karnataka High court observed that in exercise of discretion, the Disciplinary Authority should not act like a robot and justice should be moulded with humanism and understanding. It has to assess each case on its own merit and each set of fact should be decided with reference to the evidence recording the allegation, which should be basis of the decision. The past conduct of the worker may be a ground for assuming that he might have a propensity to commit the misconduct and to assess the quantum of punishment to be imposed. In that case a conductor of the bus was dismissed from service for causing revenue loss of 50p to the employer by irregular sale of tickets. It was held that the punishment was too harsh and disproportionate to the act of misconduct.

34. After insertion of section 11-A of the Act, the jurisdiction to interfere with the punishment is there with the Tribunal, who has to see whether punishment imposed by the employer commensurate with the gravity of the act of misconduct. If it comes to the conclusion that the misconduct is proved, it may still hold that the punishment is not justified because misconduct alleged and proved is

such as it does not warrant punishment of discharge or dismissal and where necessary, set aside the order of discharge or dismissal and direct reinstatement with or without any terms or conditions as it thinks fit or give any other relief, including the award of lesser punishment, in lieu of discharge or dismissal, as the circumstance of the case may warrant. Reference can be made to a precedent in *Sanatak Singh* (1984 Lab.I.C.817). The discretion to award punishment lesser than the punishment of discharge or dismissal has to be judiciously exercised and the Tribunal can interfere only when it is satisfied that the, Punishment imposed by the management is highly disproportionate to the decree of the guilt of the workman. Reference can be made to the precedent in *Kachraji Motiji Parmar* [1994 (II) LLJ 332]. Thus it is evident that the Tribunal has now jurisdiction and power of substituting its own measure of punishment in place of the managerial wisdom, once it is satisfied that the order of discharge or dismissal is not justified. On facts and in the circumstances of a case, section 11A of the Act specifically gives two folds powers to the Industrial Tribunal, first is virtually the power of appeal against findings of fact made by the Enquiry Officer in his report with regard to the adequacy of the evidence and the conclusion on facts and secondly of foremost importance, is the power of reappraisal of quantum of punishment.

35. In *Bharat Heavy Electricals Ltd.* [2005 (2) S.C.C. 481] the Apex Court was confronted with the proposition as to whether power available to the Industrial Tribunal under section 11-A of the Act are unlimited. The Court opined that "there is no such thing as unlimited jurisdiction vested with any judicial or quasi judicial forum and unfettered discretion is sworn enemy of the constitutional guarantee against discrimination. An unlimited jurisdiction leads to unreasonableness. No authority, be it administrative or judicial, has any power to exercise the discretion vested in it unless the same is based on justifiable grounds supported by acceptable materials and reasons thereof". The Apex Court relied its judgement in *C.M.C. Hospital Employees Union* [1987 (4) S.C.C. 691] wherein it was held that "section 11-A cannot be considered as conferring an arbitrary power on the Industrial Tribunal or the Labour Court. The power under section 11-A of the Act has to be exercised judiciously and the Industrial Tribunal or Labour Court is expected to interfere with the decision of a management under section 11-A of the Act only when it is satisfied that the punishment imposed by the management is highly disproportionate to the degree of guilt of the workman concerned. The Industrial Tribunal or Labour Court has to give reasons for its decision". In *Hombe Gowda Educational Trust* [2006 (1) S.C.C. 430] the Apex Court announced that the Tribunal would not normally interfere with the quantum of punishment imposed by the employer unless an appropriate case is made out therefore.

36. Power to set aside order of discharge or dismissal and grant relief of reinstatement or lesser punishment is



not untrammelled power. This power has to be exercised only when Tribunal is satisfied that the order of discharge or dismissal was not justified. This satisfaction of the Tribunal is objective satisfaction and not subjective one. It involves application of the mind by the Tribunal to various circumstances like nature of delinquency committed by the workman, his past conduct, impact of delinquency on employer's business, besides length of service rendered by him. Furthermore, the Tribunal has to consider whether the decision taken by the employer is just or not. Only after taking into consideration these aspects, the Tribunal can upset the punishment imposed by the employer. The quantum of punishment cannot be interfered with without recording specific findings on points referred above. No indulgence is to be granted to a person, who is guilty of grave misconduct like cheating, fraud, misappropriation of employers fund, theft of public property etc. A reference can be made to the precedent in Bhagirath Mal Rainwa [1995 (I) LLJ 960].

37. Whether punishment awarded to the claimant was shockingly disproportionate to his misconduct, justifying interference by this Tribunal? In Firestone Tyre and Rubber Company of India (Pvt.) Ltd. [1973 (1) S.C.C. 813], the Apex Court ruled that once misconduct is proved, the Tribunal had to sustain order of punishment unless it was harsh indicating victimization. It has been further laid therein that if a proper enquiry is conducted by an employer and a correct finding arrived at regarding the misconduct, the Tribunal, even though now empowered to differ from the conclusion arrived at by the management, will have to give very cogent reasons for not accepting the view of the employer. Again in Divisional Controller K.S.R.T.C. (N.W.K.R.T.C.) [2005 (3) S.C.C. 254] it was laid that question of quantum of punishment would not be weighed on amount of money misappropriated but it should be based on loss of confidence, which is a primary factor to be taken into account. Once a person is found guilty of misappropriating his employer's fund, there is nothing wrong for the employer to lose confidence or faith in such a person, awarding punishment of dismissal.

38. Dismissal of an employee from service is a strong measure and it can only be in exceptional circumstances that an employer is acting properly in dismissing an employee on commission of acts of misconducts. The test to be applied varies with the nature of business and the position held by the employee. Here in the case the claimant was working as a machine man on offset machine. In his absence the machine was got operated by the Manager from his assistant. The claimant exhibited his annoyance and questioned authority of the Manager in getting the machine operated in his absence. When the Manager commands him in that regard, he abuses him. He calls Shri Kamal Narain and both of them scolds the Manager. When the Manager directs him not to visit the machine room, he tampers with the machine. He instigates

other workers and made them to leave their work place. He leads them outside the premises of the Printing Press and made them to assemble there. All these events happened in a troop welfare oriented regimental setup. The officer with whom the claimant misbehaved is a member of disciplined force, where indiscipline is a gross misconduct. In case misconducts like those committed by the claimant are suffered than such behavior may prove contagious to the other member of the disciplined force. These circumstances make it apparent that the claimant made himself unworthy of retention in service. Dismissal from service is the appropriate penalty for misconducts, committed by the claimant.

39. Whether penalty of dismissal would relate back to the date of order of dismissal passed by the Printing Press? For an answer, it is expedient to consider the precedents handed down by the Apex Court. In Ranipur Colliery [(1959) Supp. 2 SCR 719] the employer conducted a domestic enquiry though defective and passed an order of dismissal and moved the Tribunal for approval of that order. It was ruled therein that if the enquiry is not defective, the Tribunal has only to see whether there was a prima facie case for dismissal and whether the employer had come to the bonafide conclusion that the employee was guilty of misconduct. Thereafter on coming to that conclusion that the employer had bonafide come to the conclusion that the employee was guilty, that is, there was no unfair labour practice and no victimization, the Tribunal would grant the approval which would relate back to the date from which the employer had ordered the dismissal. If the enquiry is defective for any reason, the Tribunal would also have to consider for itself on the evidence adduced before it whether the dismissal was justified. However on coming to the conclusion on its own appraisal of evidence adduced before it that the dismissal was justified its approval of the order of dismissal made by the employer on defective enquiry would still relate back to the date when order was made.

40. In Phulbari Tea Estate [1960 (I) S.C.R. 32] the domestic enquiry held by the employer culminating in the order of dismissal was found to be invalid, being in gross violation of the rules of natural justice. Even before the Tribunal, the employer did not lead proper evidence to justify the order of dismissal and contended itself by merely producing the statement of certain witnesses recorded during the domestic enquiry and the workman had no opportunity to cross-examine the witnesses before the Tribunal. In the absence of any evidence before it, justifying the dismissal, the Tribunal set aside the order of dismissal and granted compensation in lieu of reinstatement, which order was upheld by the Apex Court. In that case question of relating back of the order of dismissal did not arise.

41. In P.H. Kalyani [1963 (1) LLJ 673] the employer dismissed the workman after holding a domestic enquiry into the charges. Since some dispute was pending before



the Industrial Tribunal, the employer applied for "approval" of action of dismissal in compliance with the proviso to section 33(2)(b) of the Act. The workman made an application under section 33-A of the Act. Apart from relying on validity of domestic enquiry, the employer adduced all the evidence before the Tribunal in support of its action. On basis of evidence before it, the Tribunal came to the conclusion that the facts of misconduct committed by the workman were of serious nature involving danger to human life and therefore dismissed the application under section 33-A and accorded "approval" to the action of dismissal taken by the employer. In this situation the Apex Court held that if the enquiry is not defective and the action of the employer is bonafide, the Tribunal will grant the "approval" and the dismissal would "relate back to the date from which the employer had ordered dismissal". If the enquiry is invalid for any reason, the Tribunal will have to consider for itself on the evidence adduced before it, whether the dismissal was justified. If it comes to the conclusion on its own appraisal of such evidence that the dismissal was justified, the dismissal would "still relate back to the date when the order was made", *Sasa Musa Sugar Works case* (supra) was distinguished saying that observations made therein "apply only to a case where the employer had neither dismissed the employee nor had come to the conclusion that a case for dismissal had been made. In that case, the dismissal of the employee takes effect from the date of the award and so until then the relation of employer and employee will continue in law and in fact".

42. *D.C.Roy* [(1976) Lab. I.C.1142] is the illustration where domestic enquiry held by the employer was found to be invalid being violative of principles of natural justice and the employer had justified the order of dismissal by leading evidence before the Labour Court, on appraisal of which the Labour Court found the order of dismissal justified. In appeal, the Apex Court upheld the award with the observation that "the ratio of *Kalyani's case* (supra) would therefore, govern the case and the judgment of the Labour Court must relate back to the date on which the order of dismissal was passed".

43. In *Gujrat Steel Tubes Ltd.* (1980 (1) LLJ 137) inverted image of the *D.C. Roy's case* was presented by a majority of three judge bench wherein it was held that "where no enquiry has preceded punitive discharge, and the Tribunal for the first time upholds the punishment, this court in *D.C. Roy vs. Presiding Officer* (supra) has taken the view that full wages be paid until the date of the award. There cannot be any relation back of the date of dismissal when the management passed the void order". Though the court ruled that law laid in *D.C.Roy* is correct yet it followed obiter instead of the decision. Observations of the Apex Court in above decision, bearing on the relate back rule, were faulted in *R.Thiruvirkolam* (1997 (1) SCC 9) on the ground that they "are not in the line with the decision in *Kalyani* which was binding or with *D.C. Roy* to which

learned Judge Krishna Iyer J. was a party. It also does not match with the juristic principle discussed in *Wade*". The view taken in *R.Thiruvirkolam* (supra) was affirmed in *Punjab Dairy Development Corporation Ltd.* [1997 (2) LLJ 1041].

44. In view of the catena of decisions, detailed above, it is clear that an employer can justify its action by leading evidence before the Tribunal. This equally applies to cases of total absence of enquiry and defective enquiry. A case of defective enquiry stands on the same footing as of no enquiry. If no evidence is led or evidence adduced does not justify the dismissal by the employer, the Tribunal can order reinstatement or payment of compensation as it may think fit. But if it finds on the evidence adduced before it that the dismissal is justified, the doctrine of relate back is pressed into service to bridge the time gap between the rupture of the relationship of employer and employee and the finding of the Tribunal.

45. If the workman is to be paid wages upto the date of the award of the Tribunal, the Parliament has to enact so, declares the Delhi High Court in *Ranjit Singh Tomar* (ILR 1983 Delhi 802). Obviously the Act does not make any provision for the situation. Precedents in *Ghanshyam Das Shrivastava* (1973 (1) SCC 656), *Capt. M.Paul Anthony* (1999 (3) SCC 679) and *South Bengal State Transport Corporation* (2006 (2) SCC 584) nowhere deal with the controversy, hence are not discussed. In view of foregoing reasons it is concluded that punishment of dismissal, awarded to the claimant, commensurate to his misconduct and would relate back to the date of order passed by the Printing Press. The issue is, therefore, answered in favour of the Printing Press and against the claimant.

### Issue No. 3

46. One may argue that no punishment was awarded to *Shri Kamal Narain* for the acts of scolding the Manager, while the claimant was dismissed from service. Can it be said that the claimant was discriminated when punishment of dismissal was awarded to him? As emerge out of the facts unfolded by *Shri Kamal Narain*, he served the Printing Press till 1996, when he was bade farewell on account of his medical incapacity to work. Out of these facts it reflect that he was not punished for the act of scolding *Sub. G.Devashayam*. A question requires consideration as to whether *Shri Inder Narain* was entitled to similar treatment as meted out to *Shri Kamal Narain*.

47. Equality before law and equal protection of laws are fundamental rights of every person, ordains Article 14 of the Constitution. The guiding principles laid in Article 14 are that persons, who are similarly situated, shall be treated alike both in privileges conferred and liability imposed, which means that amongst equals the law should be equal and should be equally administered and that like should be treated alike. Article 16 of the Constitution guarantees equality of opportunities for all citizens in matters relating to employment or appointment to any office

under the State. What is guaranteed is the equality of opportunity. Like all other employers, government is also entitled to pick and choose from amongst a large number of candidates offering themselves for employment. But the selection process must not be arbitrary. The guarantee given by clause (a) of Article 16 of the Constitution will cover (a) initial appointments (b) promotions (c) termination of employment (d) and matters relating to salary, periodical increments, leaves, gratuity, pension, age of superannuation etc. Matters relating to employment or appointments include all matters in relations to employment both prior and subsequent to the employment which are incidental to the employment and form part of the terms and conditions of such employment.

48. Fundamental rights guaranteed by Article 14 forbids class legislation, but does not forbid classification or differentiation which rests upon reasonable ground of discretion. Classification is the recognition of the relations, and in making it the Government must be allowed a wide latitude of discretion and judgment. In a way, the consequences of such classification would undoubtedly be to differentiate persons belonging to that class from others. The classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and the differentia must have a rational relation to the object sought to be achieved. Classification may be made according to the nature of persons, nature of business, and may be based with reference to time.

49. Concept of equality guaranteed by Article 16 of the Constitution is something more than formal equality and enables the underprivileged groups to a fair share by having more than equal chance and enables the State to give favoured treatment to those groups by achieving real equality with reference to social needs. 'Protection discrimination' enabled the State to adopt new strategy to bring underprivileged at par with the rest of the society, by providing all possible opportunities and incentives to them. Therefore a class may be allowed to have preferential treatment in the matter relating to employment or appointment. There cannot be rule of equality between members of separate and independent group of persons. Persons can be classified in different groups, based on in terms of nature of persons, nature of business and with reference to time.

50. Whether the claimant was on same pedestal on which Shri Kamal Narain was placed, in the matter of misconduct(s) committed by them. As projected above, the claimant adopted a posture of insulting and insubordination towards Sub. G. Devashayam. He questioned authority of his superior and abused him. He scolded Sub. G. Devashayam, in which act Shri Kamal Narain joined hands with the former. The claimant instigated other employees and made them to leave their work place and assemble outside the premises of the Printing Press.

He tampered with offset machine and tried to make it unworkable. These facts being it to light that misconducts committed by the claimant were numerous and alarming. He made Shri Kamal Narain to join hands with him when they scolded Sub. G. Devashayam. In that act the claimant was mastermind and Shri Kamal Narain acted as his follower. All these circumstances make it apparent that misconducts committed by the claimant were distinct and different than one committed by Shri Kamal Narain. Shri Kamal Narain was made to scold Sub. G. Devashayam by the claimant. The claimant was instrumental in making Shri Kamal Narain to misconduct himself. In view of these facts it is apparent that the claimant was placed differently than Shri Kamal Narain, when they misconducted themselves. They were not at par, in commission of misconduct(s). It is not proper to say that by not initiating any action against Shri Kamal Narain, the Printing Press had discriminated the claimant in the matter of punishment awarded to him.

51. As projected above punishment of dismissal from service, awarded to the claimant commensurate to his misconduct. The Printing Press was justified in awarding extreme penalty to the claimant for serious acts of his misconduct. No unjustifiability can be attached to that action of the Printing Press. These reasons persuade me to conclude that services of the claimant were rightly dispensed with by the Printing Press w.e.f. 6.3.95. The issue is, therefore, answered in favour of the Printing Press and against the claimant.

### **Relief.**

52. First duty of a servant is to obey orders which the master is justified in giving, that is to any, all orders concerning the work which the servant is to do and the time, manner and place of performing it are presumably and in the absence of special circumstances, within the control of the master. It is the duty of the servant faithfully and truly to discharge his duties. Willful disobedience of a lawful order within the terms of service an obvious justification for an instant dismissal. When servant is insulting and insubordinate to lawful orders the master is justified in dismissing him summarily. When the servant threatens his master to cause damage to his property, the conduct of the servant make him unworthy of retention in service. Primary duties being obedience, fidelity, care, honesty and punctuality and any conduct opposed to due fulfillment of these duties will entitle the master to dismiss the servant.

53. As detailed above the claimant conducted himself in such a manner that his acts were contrary to due fulfillment of his duties towards the Printing Press. He made his employer to take strong measure, since his wrongful acts were inconsistent with his duties towards the Printing Press. He made his employer to take strong measure, since his wrongful acts were inconsistent with his duties towards

the Printing Press and continuance of confidence between them. These reasons are sufficient to announce that the claimant is not entitled to any relief, not to talk of relief of reinstatement in service with continuity and back wages. His claim statement deserves dismissal. Accordingly, the same is brushed aside. An award is passed in favour of the Printing Press and against the claimant. It be sent to the appropriate Govt. for Publication.

Dated : 11-12-2013

Dr. R.K. YADAV, Presiding Officer

नई दिल्ली, 21 जनवरी, 2014

**का.आ. 466.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डिप्टी चीफ सिक्क्यूरिटी ऑफिसर, आल इंडिया मेडिकल साइंस, नई दिल्ली के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, दिल्ली के पंचाट संदर्भ संख्या 67/2011 प्रकाशित करती है, जो केन्द्रीय सरकार को 18-1-2014 को प्राप्त हुआ था।

[सं. एल-42012/03/2014-आई आर (डीयू)]  
पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 21st January, 2014

**S.O. 466.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 67/2011) of the Central Government Industrial Tribunal/Labour Court No. 1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the Management of The Dy. Chief Security Officer, All India Medical Science, New Delhi and their workman, which was received by the Central Government on 18-1-2014.

[No. L-42012/03/2014-IR (DU)]

P. K. VENUGOPAL, Section Officer

#### ANNEXURE

**BEFORE DR. R.K. YADAV, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL  
No. 1, KARKARDOOMA COURTS, DELHI**

**I.D. No. 67/2011**

Shri Mangleshwar Patel,  
R/o 1151, Gali No. 17, Block-12,  
Sangam Vihar,  
New Delhi-110062

... Workman

#### Versus

1. The Dy. Chief Security Officer,  
All India Medical Science,  
Ansari Nagar,  
New Delhi-110029

2. M/s. Prehari Production Systems

Pvt. Ltd.,

BJA-150, IInd Floor,

Jail Road, Janakpuri,

New Delhi-110058

... Managements

#### AWARD

All India Institute of Medical Sciences (in short the AIIMS) is a multi disciplinary super specialty health sciences institution of the country. It has around 2000 indoor beds and annual intake of around 20 lakh out patients, besides 7000 vehicles daily. It has multiple entrance and exit gates. Security services are required in hospital complex, centres, teaching and faculty blocks, hostels and residential areas. Therefore, the AIIMS awarded security services to M/s Prehari Protection Systems Pvt. Ltd.' (hereinafter referred to as the contractor) vide agreement dated 05.01.2009. The contractor engaged Shri Mangleshwar Patel as a security guard, besides others, to carry out his contractual obligations. Shri Patel rendered services from 01.01.2009 to 31.12.2011. When he came to know that his provident fund contributions were not deposited with the authorities, he made a complaint in that regard. Annoyed with that complaint, his services were dispensed with on by the contractor 01.01.2012. He raised an industrial dispute before the Conciliation Officer against the contractor as well as the AIIMS. On expiry of 45 days from the date of moving a application before the Conciliation Officer, Shri Mangleshwar Patel approached this Tribunal under the provisions of sub-section (2) of section 2A of the Industrial Disputes Act, 1947 (in short the Act) for adjudication of his dispute, without being referred by the appropriate Government under sub section (1) of section 10 of the Act. Since the dispute raised was within the period of limitation provided under sub-section (3) and fulfilled all requirements of sub-section (2) of section 2A of the Act, it was registered as an industrial dispute.

2. Claim statement was filed by Shri Mangleshwar Patel pleading therein that he was appointed as security guard on 01.01.2009 to carry Out security duties at the premises of the AIIMS. Identity card was issued in his favour by the contractor. He performed his duties for a period of three years. The contractor used to deduct a sum of Rs.7000.00 per month out of his salary. Provident fund subscriptions were deducted but not deposited with the authorities. When he came to know about that fact, he made a complaint to the Central Provident Fund Commissioner in that regard. Contractor felt annoyed and his services were illegally dispensed with on 01.01.2012, after obtaining his signatures on plain papers. He presents that action of termination of his services is not in consonance with labour laws. He seeks reinstatement in service with continuity and full back wages.

3. Notice was sent to the contractor by registered post on 14.05.2013 calling upon it to file its written statement



on or before 19.06.2013. Neither the postal article was received back nor was it observed by the Tribunal that postal services remained affected from 14.05.2013 till 19.06.2013. Therefore, the Tribunal presumed that notice sent by registered post was served upon the contractor.

4. None responded on-behalf of the contractor despite service of the notice. Hence, the contractor was proceeded ex-parte, vide order dated 19.06.2013.

5. Claim was demurred by the AIIMS pleading that there does not exist any relationship of employer and employee between the claimant and the AIIMS. It has been projected that security services were outsourced, vide agreement dated 05.01.2009. Claimant was an employee of the contractor. It has been projected that the AIIMS is not aware whether services of the claimant were dispensed with in an illegal manner. It has been claimed that the dispute may be answered against the claimant and in favour of the AIIMS.

6. On pleadings of the parties, following issues were settled:

- (1) Whether the claimant had rendered continuous services of 240 days in a Calendar year to M/s Prehari Production Systems Pvt. Ltd. a contractor of A.I.I.M.S.?
- (2) Whether services of the claimant were dispensed with by M/s Prehari Production Systems Pvt. Ltd. in violation of provisions of Industrial laws?
- (3) Whether the claimant is entitled to relief of reinstatement in service?

7. Claimant tendered his affidavit Ex.WW1/A, as evidence. He relied 15 documents, which are Ex.WW1/1 to Ex.WW1/15 in support of his case. Shri Rohit Kumar, authorized representative for AIIMS was granted opportunity to cross examine the claimant, on whose request cross examination of the claimant was deferred.

8. On adjourned date, the claimant appeared for his cross examination. None came forward on behalf of the AIIMS, to purify testimony of the claimant by an ordeal of cross examination. The Tribunal was constrained to proceed under rule 22 of industrial Disputes (Central) Rules, 1957. Since none was there for the AIIMS, hence no opportunity could be granted to them to carry out cross examination of the claimant. The claimant had closed his evidence. No witness was adduced on behalf of the AIIMS to rebut facts proved by the claimant.

9. Arguments were heard at the bar. Shri B.L.Goswami, authorized representative, advanced arguments on behalf of the claimant. None came forward to raise submissions on behalf of the AIIMS as well as the contractor. I have given my careful consideration to the arguments advanced at the bar and cautiously perused

the record. My findings on issues involved in the controversy are as follows:-

#### Issue No.1

10. In his affidavit Ex.WW1/A, claimant asserts to produce identity card, signed by M/s Prehari Protection Systems Pvt. Ltd. and Chief Security Officer of the AIIMS, in token of the fact that he was an employee of the contractor. His identity card evidences that he served from 01.01.2009 to 31.12.2009. Besides his identity card, he relied on last payment receipt made in his favor by the contractor. When he came to know that his provident fund contributions were not deposited with the authorities, he made a complaint in that regard. Irked by that fact, his services were dispensed with in an illegal manner on 01.01.2012. He claims to have rendered service from 1.1.2009 to 31.12.2011.

11. An employer may discharge a portion of his labour force as surplusage in a running or continuing business for variety of reasons, e.g., for economy, convenience, rationalization in industry, installation of a new labour saving machinery etc. The Industrial Disputes Act, 1947 (in short the Act) defines “termination by the employer of the service of a workman for any reasons whatsoever”, except the categories exempted in sub-section 2(oo), to be retrenchment. The definition of the term “retrenchment”, as enacted by the Act, is extracted thus :

“(oo) “retrenchment” means the termination by he employer of the services of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include-

- (a) voluntary retirement of the workman; or
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (bb) termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
- (c) termination of the services of a workman on the ground of continued ill-health”.

12. Definition of retrenchment is very wide and in two parts. The first part is exhaustive, which lays down that retrenchment means the termination of the service of a workman by the employer “for any reason whatsoever” otherwise than as a punishment inflicted by way of disciplinary action. Thus main part of the definition itself



excludes the termination of service, as a measure of punishment inflicted by way of disciplinary action from the ambit of retrenchment. The second part further excludes (i) voluntary retirement of the workman, or (ii) retirement of workman on reaching the age of superannuation, or (iii) termination of the service of a workman as a result of non-renewal of contract of employment, or (iv) termination of contract of employment in terms of a stipulation contained in the contract of employment in that behalf, or (v) termination of service on the ground of continued ill health of the workman. Reference can be made to the precedents in *Avon Services (Production Agencies) (Pvt.) Ltd.* [1979 (I) LLJ 1] and *Mahabir* [1979 (11) LLJ 363].

13. Section 25-F of the Act lays down conditions pre-requisite to retrenchment, which are as follows :

- (i) There should be one month's notice in writing to the workman concerned.
- (ii) The notice should specify the reasons for retrenchment.
- (iii) The period of one month's notice should have expired before retrenchment is enforced, or the workman has been paid in lieu of such notice the wages for the period.
- (iv) The workman has been paid retrenchment compensation which should be equivalent to 15 days' average pay for every one years' service or any part thereof provided it exceeds six months.
- (v) The notice is also given to the appropriate Government.

14. For seeking protection under section 25-F of the Act an employee should be in continuous service under an employer for not less than one year. Continuous service for a period of one year may include period of interruption on account of sickness or authorized leave or accident or strike, which is not illegal or lockout or cessation of work which is not due to any fault on the part of the workmen, as enacted by provisions of sub-section (1) of section 25B of the Act. Sub-section (2) of the said section introduces a fiction to the effect that even if a workman is not in "continuous service" within the meaning of clause (1) for a period of one year or six months, he shall be deemed to in continuous service for that period under an employer if he has actually worked for the days specified in clauses (a) and (b) thereof. In *Vijay Kumar Majoo* (1968 Lab.I.C.1180) it was held that one year's period contemplated by sub-section (2) furnished a unit of measure and if during that unit of measure the period of service actually rendered by the workman is 240 days, then he can be considered to have rendered one year's continuous service for the purpose of the section. The idea is that if within a unit period of one year a person had

put in at least 240 days of service, then he must get the benefit conferred by the Act. Consequently, an enquiry has to be made to find out whether the workman actually worked for not less than 240 days during the period of 12 calendar months immediately preceding the retrenchment.

15. In *Ramakrishna Ramnath* [1970 (2) LLJ 306], Apex Court announced that when a workman renders continuous service of not less than 240 days in 12 calendar months, he is deemed to have completed one years' service in the industry. It would be expedient to reproduce observations made by the Apex Court in that regard, which are extracted thus :

"Under Section 25-B a workman who during the period of 12 calendar months has actually worked in an industry for not less than 240 days is to be deemed to have completed One year's service in the industry. Consequently an enquiry has to be made to find out whether the workman had actually worked for not less than. 240 days during period of 12 calendar months immediately preceding the retrenchment. These provisions of law do not show that a workman after satisfying the test under Section 25B has further to show that he has worked during all the period he has been in the service of the employer for 240 days in the year".

16. Interruption of service occurred during the course of job has to be included in uninterrupted services. Fiction under section 25-B of the Act will operate if workmen has actually worked for 240 days in a calendar year. The explanation appended to section 25-B of the Act specifically includes the days on which workman was laid off under an agreement or he has been on leave with full wages, or he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment and in the case of a female, maternity leave, under the expression 'actually worked' used under sub-section (2) of section 25-B of the Act. Question for consideration would be as to whether the words 'actually worked' would not include holidays, Sundays and Saturdays for which full wages are paid. The Apex Court was confronted with such a proposition in *American Express Banking Corporation* [1985 (2) LLJ 539], wherein it was ruled that the expression 'actually worked under the employer'. Cannot mean those days only when the workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. The Court ruled that Sundays and other holidays, would be comprehended in the words 'actually worked' and it countenanced the contention of the employer that only days which are mentioned in the explanation should be taken into account for the purpose of calculating the number of days on which the workman

had actually worked though he had not so worked and no other days.

The Court observed that the explanation is only clarificatory, as all explanations are, and cannot be used to limit the expanse of the main provision. Precedent in *Lalappa Lingappa* [1981 (1) LJ 308] was distinguished by the Apex Court in the case referred above. The precedent was followed in *Standard Motor Products of India Ltd.* [1986 (1) LLJ 34]. Thus, it is crystal clear from the law laid above that Sundays and holidays shall be included in computing continuous service under Section 25-B of the Act.

17. The Tribunal has been saddled with a responsibility to scrutinize facts unfolded by the claimant, besides documents placed over the record, in order to assess as to whether he had rendered continuous service of 240, days in a calendar year. To discharge onus on him, the claimant had deposed that he was engaged in service on 01.01.2009 by the contractor. Identity card was issued in his favour, which is Ex. WW1/1. When this identity card is perused, it came to light that the contractor had issued the identity card in favour of the claimant, which was valid from 01.01.2009 to 31.12.2009. The claimant had also relied on wage slip issued in his favour in December 2011. He projects that these documents are sufficient to substantiate facts to the effect that he rendered continuous service with the contractor from 01.01.2009 to 31.12.2011. Ocular facts unfolded by the claimant get, support from copy of identity card and wage slip. These facts are not dispelled by the contractor. When claimant adduced ocular as well as documentary evidence to substantiate that he served the contractor from 01.01.2009 to 31.12.2009, those facts are to be relied in his favour. The claimant has been able to discharge onus to establish that he rendered continuous service of 240 days in every calendar year to the contractor. Resultantly, it is held that the claimant rendered continuous service from 01.01.2009 till 31.12.2011 with the contractor. Issue is, therefore, answered, in favour of the claimant and against contractor.

## Issue No. II

18. Claimant deposes that his services were arbitrarily dispensed with by the contractor when he made a complaint to the Central Provident Fund Commissioner relating to non-deposit of his provident fund contributions with the authorities. He asserts that neither his wages were paid nor provisions of the Act were complied with. According to him, his services were dispensed with on 1.1.2012. It is not the case that the claimant reached the age of superannuation or sought voluntary retirement. No evidence was brought to show that he was employed for a fixed term of contract and his services came to an end on non-renewal of contract of employment. It was not asserted that his services were terminated on the ground of continued ill-health. Neither services of the claimant were

done away as punishment for a domestic action nor action of the management falls within the category exempted under second limb of section 2(00) of the Act. Thus it is obvious that termination of services of the claimant, for any other reason, amounts to retrenchment, as defined by clause (00) of section 2 of the Act.

19. The claimant had rendered continuous service for a period of one year, as contemplated by section 25-B of the Act. According to him, retrenchment compensation was not paid, which fact was not dispelled by the contractor. The contractor was under an obligation to pay him compensation for retrenchment, when his services were dispensed with. Payment of retrenchment compensation is a condition precedent to a valid order of retrenchment. Precedents in *Bombay Union of Journalists* [1964 (1) LLJ 351], *Adaishwar Laal* (1970 Lab.I.C.936) and *B.M.Gupia* [1979- (1) LLJ 168] announce that subsequent payment of compensation can not validate an invalid order of retrenchment.

20. Claimant deposed that his services were terminated by the contractor on 31.10.1997 without any notice. He further declares that his earned wages for a period of two months were not paid. Out of facts unfolded by the claimant, it stand crystallized that neither notice nor pay in lieu thereof nor retrenchment compensation was paid to him by the contractor. Therefore, his retrenchment is violative of the provisions of Section 25-F of the Act. Issue is, therefore, answered in favour of the claimant and against the contractor.

## Issue No. 3

21. Services of the claimant were retrenched without payment of notice pay, and retrenchment compensation. It is well settled that in a case of wrongful retrenchment, dismissal or discharge, the normal rule is to award reinstatement. But where a case falls in any of the exception to general rule, the industrial adjudicator has discretion to award reasonable and adequate compensation, in lieu of re-instatement. Section 11A of the Act vests the industrial adjudicator with discretionary jurisdiction to give "such other relief to the workman" in lieu of discharge or dismissal as the circumstances of the case may require, where for some valid reasons it considers that reinstatement with or without conditions will not be fair or proper. Hence in the case, the contractor could not show it to be a case falling within the exception to refuse reinstatement in service. Action of the contractor, in terminating services of the claimant, is illegal. It is ordered that the claimant be reinstated in service of the contractor with full back wages. An award is accordingly passed. It be sent to the appropriate Government for publication.

Date : 2-1-2014

Dr. R.K. YADAV, Presiding Officer

नई दिल्ली, 23 जनवरी, 2014

**का.आ. 467.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कांडला पोर्ट ट्रस्ट हॉस्पिटल गांधीधाम के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 1123/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-1-2014 को प्राप्त हुआ था।

[सं. एल-37012/1/99-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 23rd January, 2014

**S.O. 467.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 1123/2004) of the Central Government Industrial Tribunal/Labour Court Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Kandla Port Trust Hospital, Gandhidham and their workman, which was received by the Central Government on 20-1-2014.

[No. L-37012/1/99-IR (M)]

JOHAN TOPNO, Under Secy.

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, AT AHMEDABAD

**Present:** - Sh. Binay Kumar Sinha,  
Presiding Officer CGIT cum Labour Court,  
Ahmedabad, Dated the 30th October, 2013

**Reference: (CGITA) No. 1123/2004**

**Reference (I.T. C) No. 27/1999 (old)**

1. The Chairman,  
Administrative Office,  
Kandla Port Trust,  
P.B. No. 50, Gandhidham (Kutch),  
Gandhidham-370201

2. The Chief Medical Officer,  
Kandla Port Trust Hospital,  
Gopalpuri, Gandhidham-370240 ..... First Party

**And**

Their Workman  
Shri Omprakash Sharma  
E-140, K.P.T. Colony, Gopalpuri,  
Gandhidham-370240 .... Second party

**For the First Party :** Shri Kishor V. Gadhia, Advocate  
Shri Mahinder K. Patel, Advocate

**For the Second Party:** Shri Premkumar Dagar

Rastriya Adhyaksh  
Akhil Bhartiya Sfair Mazdoor Sangh,  
A-157, Shaktinagar,  
Gandhidham, Kutch,  
Gujarat-370201

#### AWARD

The Central Government/Ministry of Labour, New Delhi vide its order No. L-37012/1/99/IR (M) dated 09.08.1999 in exercise of power under clause (d) of sub section (1) and sub section (2A) of the Section 10 of the Industrial Dispute Act, 1947, referred the dispute for adjudication to Industrial Tribunal, Rajkot (Gujarat) under the terms of reference in the Schedule.

#### SCHEDULE

“Whether the action of Kandla Port Trust, Gandhidham/Chief Medical Officer, Kandla Port Trust Hospital, Gandhidham in terminating/removing the services of Shri Omprakash Sharma, Physiotherapist vide office Order No. MH/PS/2301/1525 dated 23.07.1997 is just and legal? If not, to what benefits the workman is entitled and what directions are necessary in the matter?”

2. The case of the workman (2nd party) as per statement of claim (Ext.4) shortly stated, is that he was appointed as Physiotherapist in K.P.T Hospital, Gandhidham on 09.01.1987 and his service was confirmed on 23-26/11/90. His record was clean during the service. His last salary was Rs.3,000 p.m. on 28.01.1991, Asst. Secretary (P) Shri Shivram gave him an order for training in Mumbai from 04.02.1991 to 15.03.1991 for occupational therapy in cerebral Palacy. But he met with an accident on the same day and he took treatment in K.P.T. Hospital but treatment was not satisfactory so he went to private Hospital Sanjivni Surgical & Maternity Hospital and received well treatment there and Doctor advised him to take rest for 10 days. Then, he informed to the 1st party C.M.O that he is unable to attend training at Mumbai, then C.M.O. Mr. Dr. M.R. Mahadik said that he met with an accident to avoid the training at Mumbai and he has to go for training otherwise the management of K.P.T. will throw him out of services. Even after his ill health he attended training at Mumbai but there were no proper accommodation provided in Mumbai by Director, Spastic Society of India, then he stayed at his relative at Vville Parle, Mumbai that was 50 k.m. away from the place of training. He fell ill and so he could not attend training for 9 days and he submitted medical report for 6 days but could not give medical report for 3 days. He attended the training for rest of training period. On return to Gandhidham, he joined the duty in K.P.T., Hospital. After lapse of long time he received chargesheet and statement of imputation without dated and signature of

any authorised officer of the 1st party. The necessary documents, names of witness were not given to him and also other formalities were not made by the 1st party. Enquiry was conducted for namesake, several enquiry officers were changed and he was not given proper opportunity to defend. The E.O. played role of E.O. and presenting officer, no witness was examined by the presenting officer, he demanded for summon of witness of Training centre which was refused by the E.O. and debarred him from defending the charges. E.O. gave its findings without any evidence. The P.O. submitted fabricated documents and E.O. relied upon that and gave findings against him. During the inquiry, he was put under suspension and was not paid proper amount of subsistent allowance. The principle of natural justice was not followed and vide order date 23.07.1997 he was removed from the service. His departmental appeal was also rejected without application of mind. Then on 14.10.1997 he served legal notice to the 1st party but that went invain. He became jobless, he searched-for job but could not get. He is presently hand to mouth. On these scores, prayer is to declare the order of dismissal dated 23.07.1997 illegal and unjust and the enquiry conducted against him to be invalid and he be reinstated with full back wages with continuity of service and also cost of litigation of Rs. 5000 and also to any relief for which he is found entitled.

3. As against this the contention of the 1st party No .1 & 2 as per joint written statement (ext.II) is that the workman (2nd party) being a physiotherapist of K.P.T. Hospital was sponsored for a course on occupation therapy in cerebral palsy organized by the Spastic Society of India, Mumbai for 6 weeks commencing from 04.02.1991 to 15.03.1991 and the workman was to attend theory/ practical examination to be conducted from 13th to -15th March, 1991. But the workman did not attend the course for 9 days - 07.02.1991 to 08.02.1991, 13.03.1991 to 15.02.1991, 05.03.1991 and from 13.03.1991 to 15.03.1991. He did not inform about his such absence to the programme incharge but sent medical certificate to them on 22.03.1991 from Gandhidham for the period from 13.03.1991 to 15.03.1991 issued by one Dr. K.B. Joshi of Mumbai on 16.03.1991. From such act on part of workman it was concluded that he did not take training course seriously but take training in casual manner that caused waste of duty period and K.P.T. funds. The workman after return from Mumbai did not report for duty on 18th and 19th March, 1991 and reported for duty on 20.03.1991. He did not submit report of his attending training course nor informed about his absence of 9 days from training programme on different dates. He was directed to submit report about training with true copy of certificate awarded to him by the institute but he replied that he was not given certificate and that he will prepare report and will submit it. As regards the workman's accident and physical unfitness, there was no fresh fracture in X-ray so he was treated as outpatient at K.P.T. Hospital. He did not apply

for leave on the basis of certificate of private surgeon nor produced it. The workman filled in 29.01.1991 and he had no hesitation to go for the training course even after his accident. It has been denied that workman was not offered male hostel accommodation but he himself stayed at relative residence. The workman presented wilful distorted facts and he wilfully absented himself from training course and not appeared in theory/practical examination which shows lack of integrity and devotion to duty. The workman contravened Regulation 3 (1) of the K.P.E. (Conduct) Regulations, 1964. So he was charge sheeted under Regulation 12 of K.P.E. (classification control and Appeal) Regulation, 1946 vide memorandum No. MH/PS/2301 dated 25.04.1991. He was placed under suspension pending disciplinary proceeding by order dated 31.07.1992. A proper departmental enquiry was conducted following principle of natural justice opportunity was given to delinquent workman to defend himself. The penalty of removal imposed on him by Disciplinary Authority is proper and just his appeal was also rejected. On these scores, Prayer is to dismiss the reference since the delinquent workman is not entitled to any relief.

4. In view of the rival contentions in the pleadings of the parties, the following issues are taken up for consideration and adjudication:

#### ISSUES

- (i) Whether the reference is maintainable?
- (ii) Whether the delinquent workman (2nd party) has valid cause of action in this case?
- (iii) Whether the principle of natural justice fair play was observed and adopted by the management (1st party) in conducting domestic enquiry against the delinquent?
- (iv) Whether the findings in the report of enquiry officer dated 18.09.1993 (Ext. ) is perverted?
- (v) Whether the order of punishment of termination removal dated 23.07.1997 of the 2nd party Shri Omprakash Sharma is shockingly disproportionate to the gravity of misconduct under the charge levelled?
- (vi) Whether the punishment awarded to the delinquent workman is legal, proper and justified?
- (vii) Whether the 2nd party (workman) is entitled to the relief as claimed?

#### FINDINGS

**ISSUE No. iii, iv, v, and vi:—** The parties have not filed any pursis to decide the validity or otherwise of domestic enquiry held against the workman as preliminary issue. The workman in his statement of claim has raised the issue that domestic enquiry held against him was not



conducted by the management (1st party) following the principles of natural justice, all documents were not provided, the management did not examine any witness enquiry and the E.O. conducted double role of E.O. as well as of, P. O. and the delinquent was not allowed to examine witness of Training programme, Mumbai and sufficient opportunity was not given to defend against the charge. On the other hand, the 1st party as per w.s. para 14 has taken the stand that all laid down principle of natural justice was followed.

6. The 2nd party (workman) deposed in oral evidence (Ext.15) in support of his case that illegal chargesheet was given to him for not attending training programme properly, not appearing in exam and remained absent for 9 days and departmental enquiry held was with preoccupied intention of removing him from service on the basis of perverse finding of Enquiry officer without examining of management witness and preventing opportunity to the workman of cross examining witness of management. The 1st party (K.P.T.) did not also examine any witness in this case in support of validity of domestic enquiry rather only copy of enquiry papers through a list Ext.13. The 2nd party has also produced some documents with list Ext.14 and its copy furnished to the 1st party's lawyer. On behalf of the 1st party 9 documents were produced as per list dated 25.06.1999 and its copy received by representative of 2nd party. The 2nd party also submitted three documents (1.) Copy of judgement of Hon'ble Supreme Court in Civil Appellate No. 1906/99 dated 30.03.1999 (2.) Copy of Kandla Port Employee Classification Contract and Appeal Rules, 1964 and (3.) Judgement dated 19.08.2002 of Hon'ble Supreme Court in Civil Appeal No. 5106/2000 and its production allowed by the lawyer of the 1st party. The 2nd party also submitted 30 documents as per list Ext. 34 including appointment order dated 29.01.1987 confirmation order dated 26.11.1990, office order dated 13.05.1991, 21.10.1991 and 11.08.1992 and inquiry proceedings (Ext.34/6 to 34/27) application for production of documents Ext.34/28, catalogue of S.S.1. (Ext.34/29) and letter of S.S.1. dated 17.06.1991 (Ext.34/30) to support his case.

7. It may not be out of place to mention that the 1st party had filed proposed amendment application with as to factum of past service record of the w.s. vide Ex 26 for adding para 15A in w.s as to factum of past service clean as to giving of memos, warning etc. to the 2nd party workman. The 2nd party filed rejoinder to such amendment and vide Ext.31 this Tribunal had rejected the prayer of the 1st party for proposed amendment by order dated 23.12.2010.

8. I have gone through the copy of entire enquiry file submitted by the 1st party vide list Ext.13. I have also gone through the papers submitted by the 2nd party through a list Ext.34. The allegation against the workman is that he while functioning as physiotherapist in port Hospital during February-March 1999. Committed gross misconduct—He

was sponsored by Kandla Port Trust for a course on occupational therapy in cerebral palsy organised by Spastic Society of India, Mumbai for 6 week from 04.02.1991 to 15.03.1991 but the workman Omprakash did not attend the course on 9 days- 07.02.1991 to 08.02.1991, 13.02.1991 to 15.02.1991, 05.03.1991 and 13.03.1991 to 15.03.1991. He did not inform to programme incharge, but sent medical certificate to them on 22.03.1991 from Gandhidham for the period 13.02.1991 to 15.02.1991 and 13.03.1991 to 15.03.1991 issued by Dr. K.B. Joshi of Mumbai. He did not take the training course seriously, resulting in waste of duty period and Kandla Port Trust Fund. For this charge the defence statement was put before the enquiry officer that he met with an accident on 28.01.1991 while coming to meet CM.O. that without his consent why he has been sponsored for the training. He was brought by people to K.P.T. Hospital where he was not treated well then he went to private Hospital (Sanjivani Surgical) where he was treated well and doctor advised him to take rest for 10 days. But C.M.O. compelled to join training course at Mumbai otherwise he will be thrown out from his service. The workman Omprakash in his oral evidence before this court (vide Ext 17) supported this. But 1st party (management) did not adduce oral evidence in the court to refute the version of workman that he was not seriously injured in accident and for avoiding to go training course managed his accident to give his colour. But even in adverse circumstances that Doctor advised him to take bed rest for 10 days he was compelled to attend the training course at Mumbai and he attended the training course started from 04.02.1991. This also shows, his bonafide in abiding with the order of C.M.O. who is also disciplinary authority who imposed punishment of termination. Well explained reason was given by the delinquent in domestic enquiry that he suffered from Malaria and was treated by Dr. Joshi of Mumbai and so could not attend the training course on 07.02.1991, 08.02.1991, 13.02.1991 to 15.02.1991, 05.03.1991 and 13.03.1991 to 15.03.1991. For the three days of absence from training course on 07.02.1991, 08.02.1991 and 05.03.1991 explanation was given that while coming to training place by local train from Ville Parle due to crowd his injured leg was again injured causing bleeding and prevented him attending training on those dates. So for absence of 9 days in training course, the workman had given plausible explanation through statement of defence and was to produce 11 documents to defend his case and he had also given the names of three witness Mrs. Mumtaz, Dy. Director S.S.I., Mumbai, Miss Pamela, Director S.S.I., Mumbai and Mrs. Mitto Alour, Director Technical Service and administration S.S.I., Mumbai before the enquiry officer in the inquiry sitting on 02.07.1992. But calling those person from S.S.I., Mumbai as defence witness was turned down by the E.O. so principles of natural justice was breached by the E.O. and opportunity was not granted to summon any of those witness to obtain the relevant document which was to be produced by procuring from S.S.I., Mumbai. More so, in

support of charge as to 9 days absence from training course no witness was produced by the presenting officer and instead of correspondence letter of programme incharge of S.S.I., Mumbai was taken as evidence in enquiry on behalf of the management. Now coming to the relevancy of that letter of programme incharge Mrs. Mumtaz Virani, Dy. Director, Post Graduate studies addressed to CM.O., Kandla Port Trust Hospital dated 10.04.1991. This letter go to show that the workman Mr. Sharma did not sent leave application of 9 days absence from training course but had sent medical certificate vide letter dated 22.03.1991. Such letter addressed to CM.O. (Disciplinary Authority) do not go to show that due to absence on those 9 days from training course the trainee Mr. Sharma had any serious misconduct, The Dy. Director in her letter has not suggested for taking disciplinary action against Mr. Sharma Likewise Dy. Director such correspondence in para 2 of letter that accommodation in male hostel was arranged but Mr. Sharma was not interested in taking up accommodation as he had friend/relative in Mumbai and he preferred to stay with them. In this connection the statement of defence of the delinquent Mr. Sharma submitted before the E.O. has also to be taken in account where he stated that there were 29 female trainees and two male trainees -Mrs. Mumtaz Virani, Dy. Director of Spastic Society of India, Mumbai herself had advised him to make his own arrangement for lodging and boarding. There is also explanation of Mr. Sharma in his statement of defence about not accommodating in separate Hostel away from 29 female trainees staying in the Hostel Mr. Sharma might have felt uncomfortable to stay even in separate room but amongst 29 female trainees. The management side could not be able to refute that almost all trainees were female except two male. More so, no materials has been produced by management that another male trainee beside Mr. Sharma had stayed in the Hostel. Now coming to peruse the letter of Mrs. Mumtaz Virani addressed to Mr. Sharma in connection with his series of letters sent to her (Ext.34/30) This is reply of Mrs. Mumtaz Virani, Dy. Director to the queries raised by workman (Mr. Omprakash Sharma) in his letter 1/91, 2/91, 3/91, 4/91 dated 10.05.1991 (3 letters) and 17.05.1991. Para 2 of letter states rule for hostel facilities will change from this year but generally the practices is and will be that we need to know at the time of application whether a candidate needs hostel facilities or not. Para-3. is regarding Mr. Sharma's attendance certificate sent to Mr. Mahajan, K.P.T., Mumbai and that he (Mr. Sharma) is not eligible for an M.C.P. passed certificate as do not appear for the practical and theory exam. Para 4 of the letter states— We do not have a set of rules and regulations but we do expect regular attendance .... Desire to learn and participate

in theory and practical sessions. In the light of letter written to C.M.O., K.P.T. and to Mr. Sharma by Mrs. Mumtaz Virani, the management of the 1st party could not produce oral or documentary evidence in enquiry proceeding that the workman physiotherapist had ever applied for hostel facilities. More so, there was no strict adherence to that each and every trainee has to stay in the hostel. More so, there was no set of rules and regulations in the Institute (Spastic Society of India). In that view of the matter the personnel injuries caused to the delinquent Mr. Sharma on 28.01.1991. He was brought to K.P.T. Hospital in injured condition where X-ray left shoulder, X-ray Right Front, X-ray Right Knee joint were taken but management did not produce those X-ray during enquiry even demanded by the delinquent. Whereas certificate of Dr. Yogesh Joshi of Sanjivani Surgical Maternity Hospital dated 28.01.1991 given to delinquent clearly shows that he is suffering from Sprain=Civie ... Right. Ankle, Right knee, forehead, contusion other parts of body and was advised complete bed rest for 10 days from 28.01.1991. That means he was advised to take bed rest up to 06.02.1991. But even than the delinquent went to Mumbai and joined the training course from 04.02.1991. He fell ill of Malaria and was under treatment of Dr. K.B. Joshi, M.B.B.S. of Ville Parle (E) Mumbai during the period 13.02.1991 to 15.02.1991 and 13.03.1991 to 15.03.1991. As per doctor's certificate he was fit to resume duty from 16.03.1991. The delinquent has given the reason of his absence for six days. As per his oral evidence (Ext.15) he was attending the training course by journey of 50k.m. by local train from Ville Parle and during daily journey by local train he sustained injury in his leg due to crowd of passenger and so he could not attend training course on 07.02.1991, 08.02.1991 and 05.03.1991, he was suffering from fever so could not attend the training course. There is no any contrary evidence of management side before E.O. that he was healthy and hearty on those three days in attending training course.

9. The adverse circumstances appearing to the delinquent was not considered in imputing the charge of gross misconduct against him by the C. M.O. Disciplinary Authority. Likewise the E.O. in stereo type fashion without granting reasonable opportunity to the delinquent rejecting the prayer to call as witness to Mr., Mumtaz Virani and other from Spastic Society of India, Mumbai and without having any oral evidence of management and only forming basis of letter of Mrs. Mumtaz Virani, Dy. Director S.S.I, Mumbai has given conclusion that the delinquent Omprakash Sharma is guilty of gross negligence as all the charges regarding bsenting from training course for 9 days and giving false statement that Hospital facility was not provided and he was asked to arrange boarding and lodging

was proved from documents i.e. letter of Mrs. Mumtaz Virani. The question arise how a letter of Dy. Director can be used as evidence for proving the charge of giving false statement by Mr. Sharrna. Mrs Mumtaz Virani ought to have been called as management witness but she was not called as witness and in turn when delinquent prayed to call her as defence witness such prayer was turned down by E.O. that clearly reflects that E.O. has not followed the principles of natural justice in conducting departmental enquiry. In such view of the matter the management representative P.O. ought to have produced both oral and documentary evidence so that the delinquent and his D.A. might have got opportunity to cross examination for testing the witness veracity.

10. It appears from enquiry papers produced by the 1st party and also on going through the enquiry report, that 22 sittings of domestic enquiry was held during the period of 4 enquiry officer which were changed on after another and the 1st enquiry sitting commenced on 01.07.1991 and last 22nd enquiry sitting was on 08.09.1993. But even during such long span of enquiry no witness was produced by the management side and the charge sheeted employee Omprakash Sharrna was not allowed to put oral evidence of defence witness. The E.O. has not adopted partiality. The last E.O. Mr. V. Shivraman, Asst. Secretary K.P.T. had signed the order as to sending the workman on training programme. The argument on behalf of the 2nd party appears to be tenable that the 4th E.O. Mr. V. Shivraman who submitted inquiry report (Ext.18) was not impartial and so only on the letter from S.S.I. , Mumbai produced by the presenting officer, the E.O. having with biased view mentioned in the inquiry report at Page 11. The contention of Shri Sharma appears to have misconceived him by promoting from the back of his mind to embolden him to remain absent from the training course without support of medical certificate. The E.O. appears to have concluded by proving charge of 3 days absence from training class on circumstantial evidence. I failed to undersigned how E.O. without evidence of witness of S.S.I., Mumbai can conclude intentional and deliberate absenteeism of Mr. Sharma from training class. The E.O. failed to examine the statement of defence of the charge sheeted employee in right representative. The findings to the enquiry report as to 2nd charge of false statement by Mr. Sharma about non availability of male hostel facility at S.S.I, Mumbai also appears to be based on conjectures without examining the aspect that majority of trainee were female 29 in number and only two male that how it was practical to stay of Mr. Sharma in the Hostel among 29 female trainees. The delinquent was prevented to test the veracity of Mrs. Mumtaz Virani, Dy. Director, S.S.I. in her cross examination. In the letter of Mr. Virani to C.M.O.

(Disciplinary authority) there is only mention that Hostel provided but no copy of allotment order with Room number of hostel sent along with letter.

11. So, I find and hold that principles of natural justice was not followed in conducting domestic enquiry against the delinquent workman Mr. Omprakash Sharma. I also find and hold that the findings of enquiry officer in his enquiry report dated 18.09.1993 is perverted. I also find and hold that the C.M.O. (Disciplinary Authority) has failed to consider the circumstances adverse to the delinquent and has based its punishment order as to removal/ termination from the service making its basis on perverted findings of the E.O. The delinquent was not an offender of serious crime like murder, dacoity and embezzlement. There was no allegation insubordination or scolding , manhandling to his superior officer, or was indulged in anti social activities, rather the delinquent had not attended the training class on three days without giving medical certificate and that he did not stay in Hostel rather preferred to stay at resident of relative /friend do not go to attract for such major punishment of termination of a confirmed employee doing duty as physiotherapist in K.P.T. Hospital. The past minor misconduct and order of warning caution etc. are not to be looked into in the allegation as per charge. Rather this go to show biased attitude of the C.M.O. who firstly issued memorandum of charge of gross misconduct but as a matter fact there was no serious misconduct on his part to impose major penalty. If workman Mr. Sharma (Physiotherapist) out of six week training had not attended on some days saying it for 9 days he could not get certificate from S.S.I. , this was itself a stigma on his part. The management of K.P.T. was at liberty to recover the fee of Rs. 500 paid to the spastic society of India. The management may have taken steps not to pass T.A. D.A. of Mr Sharma. The controlling officer C.M.O. might have entered adverse remark in the ACR of Mr. Omprakash Sharma and in this way Mr. Sharma Physiotherapist might have faced consequence of scope of not getting a promotion etc. But on this cause issue of article of charges imputing allegation of gross misconduct and without observing principles of natural justice, proving the charges on conjecture and taking into account of meagre circumstantial evidence, giving of perverted findings in inquiry report and then imposing the maximum punishment of termination/ removal from the service, totally shocks the judicial conscience of this Tribunal that the management of the 1st party has made a mountain of the mole to any how eliminate the delinquent workman Mr. Sharma by termination/removal that has caused his economic death. So, I further find and hold that the punishment of termination /removal by order dated 23.07.1997 awarded to

the 2nd party workman Shri Omprakash Sharma is shockingly disproportionate to the gravity of misconduct. I further find and hold that the punishment awarded to the delinquent (the 2nd party) is not at all legal, proper and justified.

The issue No. iii, iv, v and vi are therefore decided against. the 1st party.

**12. ISSUE NO.vii:-** As per findings to issue No. iii, iv, v and vi in the foregoing this tribunal invoking the powers u/s.11A of the I.D. Act, hereby set aside the order of punishment dated 23.07.1997 imposed by the C.M.O. cum Disciplinary Authority and also set aside the order of Appellate Authority confirming the punishment of removal of the 2nd party Shri Omprakash Sharma from the services. It has come in the evidence of the 2nd party (Ext.15) that he remained unemployed after termination. There is no contrary evidence on behalf of the 1st party that the 2nd party even after termination remained in gainful employment. In such view of the matter the relief to the 2nd party will be for his reinstatement, continuity in service, consequential benefits and back wages. But it has come during argument by Shri K.V. Gadhia, Learned Advocate for the 1st party that the workman (2nd party) Shri Omprakash Sharma reached the age of the superannuation on 1st September, 2011. So question of reinstatement does not arise rather he can claim monetary benefits. The representative of the 2nd party has not refuted such arguments that the delinquent workman has already reached the age of superannuation.

13. So considering the facts that the 2nd party since crossed the age of the superannuation. So he is entitled for full back wages from the date of his termination with continuity of his service and consequential benefits till reaching the age of the retirement. The 2nd party is also awarded cost of Rs. 5000 by way of litigation cost from the 1st party.

**14. ISSUE NO. i and ii :** As per findings above, I further find and hold that the reference is maintainable and the 2nd party has valid cause of action to raise dispute.

This reference is allowed accordingly with cost.

The 1st party are directed to implement the award as to payment of full back wages, with consequential benefits and continuity of service to the 2nd party Shri Omprakash Sharma till his reaching superannuation within two month from the receipt of copy of award failing which amount of back wages will carry interest @ 9% P.A.

This is my award.

B. K. SINHA, Presiding Officer

नई दिल्ली, 23 जनवरी, 2014

**का.आ. 468.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ओ एन जी सी, अहमदाबाद के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 111/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-1-2014 को प्राप्त हुआ था।

[सं. एल-30012/77/2005-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 23rd January, 2014

**S.O. 468.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 111/2006) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of ONGC, Ahmedabad and their workman, which was received by the Central Government on 20-1-2014.

[No. L-30012/77/2005-IR (M)]

JOHAN TOPNO, Under Secy.

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

#### Present :

Binay Kumar Sinha,  
Presiding Officer, CGIT cum Labour Court,  
Ahmedabad, Dated 14th October, 2013

#### Reference: (CGITA) No. 111/2006

1. The Director,  
M/s Industrial Security Services,  
1st floor, Upal Tower,  
Opp. Umiya Dham, Vaishali Cinema,  
Surat Gujarat-395006

2. The Chief Manager (Security & Fire)  
ONGC Ltd., Avani Bhavan, Chandkheda,  
Ahmedabad (Gujarat)

3. Executive Director,  
ONGC Ltd. Avani Bhavan, Chandkheda,  
Ahmedabad (Gujarat)

..... First Party

#### And

Their Workman  
Mrs. Cicily Paul,  
G-1, Hiranank Society,  
Near Sharda Petrol Pump, Chandkheda,  
Ahmedabad (Gujarat)

.... Second Party



For the First Party : Shri Kishor V. Gadhia, Advocate

For the Second Party : None

New Delhi, the 23rd January, 2014

### AWARD

The Central Government/Ministry of Labour, New Delhi, vide its order N0. L-30012/77/2005-IR(M) dated 17.04.2006 under clause (d) sub-section (1) and sub-section (2A) of section 10 of the Industrial Dispute Act, 1947 referred the dispute to this Tribunal for adjudication on the terms of reference in the Schedule :

### SCHEDULE

“Whether the action of the management of ONGC by terminating the services of Mrs. Cicily Paul, Stenographer cum-PA with effect from 3-7-2004 without following the procedure as laid down under section 25F of the I. D. Act, 1947 is legal and justified? If not, what relief the workman is entitled to and to what extent?”

2. In spite of notice the 2nd party failed to submit statement of claim whereas the 1st party (ONGC LTD) appeared through Lawyer by executing power in favor of Shri K.V. Gadhia, Advocate. The 1st party appearing on dates but the 2nd party Mrs. Cicily Paul filed two application first on 07.10.2010 praying for time that she has not yet retained any lawyer and the second application after long interval on 03.05.2012 has not yet filed statement of claim. Ample opportunity was given to put her claim in this case by submitting statement of demand but she failed to do so. During pendency of the case since 03.05.2006, 39 adjournment were granted in this case during the span of more than seven years, that go to reflect total slackness on part of the workman Mrs. Cicily Paul and also showing her disinterestedness. Whereas the principal employer (ONGC Ltd) remains in attendance on the dates.

3. In the circumstances this Tribunal has reason to believe that the dispute raised by the 2nd party has no leg to stand. So, the terms of reference is answered in the affirmative in favour of the 1st party.

This reference is, therefore, dismissed. No order as to cost.

B. K. SINHA, Presiding Officer

नई दिल्ली, 23 जनवरी, 2014

**का.आ. 469.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ओ एन जी सी, अंकलेश्वर के प्रबंधन के संबद्ध नियोजक और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 1457/04) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-1-2014 को प्राप्त हुआ था।

[सं. एल-30012/12/2004-आई आर (एम)]  
जोहन तोपनो, अवर सचिव

**S.O. 469.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1457/04) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of ONGC, Ankleshwar and their workman, which was received by the Central Government on 20-1-2014.

[No. L-30012/12/2004-IR (M)]  
JOHAN TOPNO, Under Secy.

### ANNEXURE

### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Binay Kumar Sinha,  
Presiding Officer, CGIT cum Labour Court,  
Ahmedabad, Date: 14th October, 2013

### Reference (CGITA) No. 1457/04

1. The Group Manager (P)  
ONGC Ltd., Ankleshwar Project  
Ankleshwar (Gujarat)

2. Industrial Security Services,  
103/113, Omkar Chambers,  
1st floor, Opp. Rly. Station  
Surat (Gujarat)

And

Their Workman  
Sh. Shashikant Maganlal Rana  
Ramkund Road, Ankleshwar

For the First Party : Shri K. V. Gadhia, Advocate  
Shri M. K. Patel, Advocate

For the Second Party : None

### AWARD

The Central Government/ Ministry of Labour, New Delhi vide its order No. L-30012/12/2004-IR(M) dated 14.06.2004 under clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Dispute Act, 1947, referred the dispute to this tribunal for adjudication on the terms of the reference in the Schedule :

### SCHEDULE

“Whether the action of the management of Oil & Natural Gas Corporation Ltd, Ankleshwar project in terminating the services of Shri Shashikant Maganlal

Rana 'Peon' w.e.f 10.12.1998 through its contractor M/s Industrial Security Services, is legal, proper and justified? If not, to what relief the concerned workman is entitled and what other directions are necessary in the matter?"

2. Notice issued to the parties for appearing in the case to file respective pleading with documents. The 1st party No. 1 (ONGC Ltd.) appeared and executed Vakilpatra in favour of Gadhia Associates on 15.02.2005. Thereafter case record transferred to Industrial Court, Ahmedabad and again notice was issued Ref. I.T.C. 1222/2008. But the 2nd party did not appear. Again case record transferred to Industrial Court, Vadodara and fresh notice to the parties was issued under new Ref. I.T.C. No. 267/09 on 26.10.2009. Thereafter on 27.01.2010 an authority letter was filed by the 2nd party workman in favour of Union representative P.V. Baria. But thereafter 2nd party neither filed statement of claim nor appear in the case. Subsequently, the case record returned back to this Tribunal under order of transfer of M.O.L., New Delhi and again fresh notice was issued to the parties. The 1st party No. 1 appeared on dates but 2nd party workman either himself or through Union representative failed to appear. Lastly, the case of the 2nd party in filing statement of claim was closed.

3. The 2nd party who raised the industrial dispute in this case has failed to submit his statement of claim. Whereas the 1st party (ONGC Ltd.) is appearing in the case on dates awaiting for receipt of copy of statement of claim so that written statement may be filed. It was upon the 2nd party to prove the claim, in this case through pleading (statement of claim) and evidence oral and documentary, but hopelessly failed in this regard. So, this Tribunal has reason to believe that the demand raised by the 2nd party workman has no leg to stand and so, the terms of reference is answered in affirmative in favour of the 1st party. And this reference is, therefore, dismissed. No. order as to cost.

Let a copy of the award be sent to the appropriate Government for the needful.

B. K. SINHA, Presiding Officer

नई दिल्ली, 23 जनवरी, 2014

**का.आ. 470.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ओ एन जी सी, अहमदाबाद के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 581/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-1-2014 को प्राप्त हुआ था।

[ सं. एल-30011/37/2003-आई आर (एम) ]  
जोहन तोपनो, अवर सचिव

New Delhi, the 23rd January, 2014

**S.O. 470.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 581/2004) of the Central Government Industrial Tribunal/Labour Court Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of ONGC, Ahmedabad and their workman, which was received by the Central Government on 20-1-2014.

[No. L-30011/37/2003-IR (M)]

JOHAN TOPNO, Under Secy.

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

#### Present :

Binay Kumar Sinha,  
Presiding Officer, CGIT-cum-Labour Court,  
Ahmedabad, Dated 14th October, 2013

**Reference: (CGITA) No. 581/04**

**Reference: (I.T.C.) No. 55/03 (old)**

1. M/s. Industrial Security Services,  
Parichay Shopping Centre,  
Near 'D' Cabin,  
IOC Road, Post New Rly. Colony,  
Ahmedabad (Gujarat) 380001

2. The General Manager  
ONGC Ltd., Ahmedabad Project,  
Chandkheda, Sabarmati,  
Ahmedabad (Gujarat)

... First Party

#### And

Their Workman  
Shri Babubhai G. Prajapati  
(Through the Union)  
The President, Gujarat Labour Union,  
24/3 Ellora Home Centre,  
Behind Relief Cinema, Saraspur Road,  
Ahmedabad (Gujarat)-380001

... Second Party

For the First Party : Shri M.K. Patel, Advocate

For the Second Party : None

#### AWARD

The Central Government/Ministry of Labour, New Delhi vide its order No. L- 30011/37/2003-IR (M) dated 14.11.2003

under clause (d) of sub section 10 of the Industrial Dispute Act, 1947 referred the dispute to the Tribunal for adjudication on the terms of reference in the Schedule:

### SCHEDULE

“Whether the demands of General Secretary, Gujarat Labour Union for treating Shri Babubhai G. Prajapati, contract Labour, as Class IV employee of ONGC, for payment of wages as are being paid to the ONGC class IV employees from the date of appointment and for regularisation of his service are legal and justified? If so, to what relief the workman concerned is entitled?”

2. On notice to the parties to appear and to file pleadings the Union (S.P.) and the management (1st party No. 2 ONGC) appeared and filed respective pleadings statement of claim and written statement.

3. The Union executing power (Vakilpatra) in favour of Shri Hemal Kamendhubhai Acharya, Advocate filed statement of Claim (Ext. 4) pleadings therein that the workman involved in this case is doing works of perennial nature under the cover of contractual worker and is doing same work as that of regular class IV worker of the principal employer (ONGC) but is not being paid similar wages and all the facilities as that of regular staff. The workman is virtually working under the control of principal employer (ONGC) and not under the contractor and the ONGC is depriving him of his legal right. Relief has been sought for treating the workman concerned to be direct employee of the ONGC from the date of initial appointment and to provide all wages and other benefits as availed by the regular workman of ONGC.

4. As against this the contention of the 1st party (ONGC Ltd.) as per written statement (Ext. 5) is that the reference is not maintainable, no master and servant relationship between ONGC Ltd. and the concerned workman. The 1st party is not working under prohibited categories. The corporation has awarded the job contract to the contractor through a valid and legal tendering process prevailing in all Government organisations. In no case the concerned workman is entitled for absorption/regularisation in the establishment of ONGC as a back door entry since the workman doing contractor works has not been appointed following the procedure laid down under Article 14, 16 and 309 of the Constitution of India. So the reference is liable to be dismissed with cost.

5. But the 2nd party (Union) left to attend on the dates since pretty long time. Fresh notice was issued but all efforts went invain and the S.P. (Union) upon which onus is to prove its case failed to lead either oral or documentary evidence. So this tribunal has reason to believe that the demand raised by the Union for the cause of contractual workman has no leg to stand and so the

terms of reference is answered in negative against the Union. And this reference is dismissed. However, no order as to costs.

Let a copy of Award be sent to the appropriate Government for publication and for needful.

B. K. SINHA, Presiding Officer

नई दिल्ली, 23 जनवरी, 2014

**का.आ. 471.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ओ एन जी सी, अंकलेश्वर के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 1438/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-1-2014 को प्राप्त हुआ था।

[सं. एल-30011/1/2004-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 23rd January, 2014

**S.O. 471.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1438/2004) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of ONGC, Ankleshwar and their workman, which was received by the Central Government on 20-1-2014.

[No. L-30011/1/2004-IR (M)]

JOHAN TOPNO, Under Secy.

### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT, AHMEDABAD

#### Present :

Binay Kumar Sinha,  
Presiding Officer, CGIT-cum-Labour Court,  
Ahmedabad, Date: 17th October, 2013

#### Reference (CGITA) No. 1438/2004

1. The Asset Manager,  
ONGC Ltd.,  
Ankleshwar

2. M/s. Central Investigation & Security Service Pvt.  
DG-15, Sardar Patel Complex, GIDC, Ankleshwar

3. M/s. Janpriya Engineering Co.  
Co. House Keeping ONGC Colony,  
Ankleshwar

4. M/s. Industrial Security Services,  
Room No. 2, Niharika Apartments,  
Opp. ONGC Office,  
Ankleshwar-2

5. M/s. Nikki & Co.  
C/o Gardening ONGC Colony,  
Ankleshwar

6. M/s. P.B. Patel & Co.  
C/o ONGC Ltd.,  
Ankleshwar

7. M/s. Moosaji Agency  
C/o ONGC Ltd.  
Ankleshwar

**And**

Their Workman Shei Maksood Hussain  
Vallibhai & 53 Other Contractual workman  
(as per List Annexure-A)  
Shri Kesharbhai Bansilal & 13 Others  
(List as Annexure-B)  
Through the Union (The Branch Chairman),  
ONGC Employees Association,  
Manav Vikas Bhavan,  
Ankleshwar-393010

For the First party : Shri K.V. Gadhia, Advocate

For the First party No. 2 to 7: None

For the Second party (Union) : None

### **AWARD**

The Central Government/ Ministry of Labour, New Delhi vide Order No. L- 30011/1/2004-IR (M) dated 28.05.2004 under clause (d) of sub section (1) and sub-section (1) and sub-section (2A) of Section 10 of the Industrial Dispute Act, 1947, referred the dispute to this Tribunal for adjudication on the terms of reference in the Schedule:

### **SCHEDULE**

“Whether the demand of the Union in respect of S/ Shri Maksood Hussain Vallibhai & 53 Other contractual workman (list as Annexure-A) engaged through various contractors in the establishment of ONGC Ltd, Ankleshwar for treating them as direct and regular employee of ONGC Ltd., along with consequential benefits is legal, proper and justified? If so, to what relief these workman are entitled and from which date and what directions are necessary in the matter?”

2. Whether the action of the management of ONGC Ltd., Ankleshwar in termination the services of

S/Shri Kesharbhai Bansilal & 13 Others (List as Annexure-B) through their contractor w.e.f. 11.02.2003 is legal, proper and justified? If not, to what relief these 14 workmen are entitled and from what other directions are necessary in the matter?

3. Even after repeated notices, the Union (2nd party) failed to appear in this case and did not file statement of claim in order to show eagerness to contest this reference against the management of ONGC Ltd., Ankleshwar and other contractors. However, the 1st party No. 1 ONGC Ltd., Ankleshwar appeared on notice and executed Vakilpatra in favour of Gadhia Associates. The contractors F.P. No. 2 to 7 did not also appear.

4. Since the Union 2nd party raised this industrial dispute for the cause of workman involved in this case but has lost interest and did not care to file statement of claim even giving adjournment for about nine years.

In the event the terms of reference are answered in favour of the 1st party No. 1.

The reference is, therefore, dismissed. No order as to cost.

Let a copy of Award be sent to the appropriate Government for publication u/s 17 (1) of the I. D. Act, 1947.

B. K. SINHA, Presiding Officer

नई दिल्ली, 23 जनवरी, 2014

**का.आ. 472.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ओ एन जी सी अहमदाबाद के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 1458/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-1-2014 को प्राप्त हुआ था।

[सं. एल-30012/13/2004-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 23rd January, 2014

**S.O. 472.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1458/2004) of the Central Government Industrial Tribunal/ Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of ONGC, Ahmedabad and their workman, which was received by the Central Government on 20-1-2014.

[No. L-30012/13/2004-IR (M)]

JOHAN TOPNO, Under Secy.



**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT,  
AHMEDABAD****Present :**

Binay Kumar Sinha,  
Presiding Officer, CGIT-cum-Labour Court,  
Ahmedabad, Date: 13th August, 2013

**Reference (CGITA) No. 1458 of 2004**

1. M/s. Yashdeep & Co.  
Vardhman Chambers, Kalyan Street,  
Dhabandar,  
Mumbai-9

2. The Group General Manager (P)  
ONGC Ltd., Ankleshwar Projects  
Ankleshwar.

3. M/s. P.B. Patel & Co.  
C/o. ONGC Office, Ankleshwar Projects  
Ankleshwar. .... First Party

And their Workman

Sh. Alpeshkumar Vasantlal Patel  
Muktidham Society, B-37, Behind GEB,  
Ankleshwar. .... Second Party

For the First Party: - Shri K. V. Gadhia

For the Second Party: - None

**AWARD**

The Government of India/ Ministry of Labour, New Delhi, by its order No. L- 30012/13 /2004-IR(M) dated 14/06/04. Considering on Industrial Dispute exists between the employers in relation to the management of M/s. Yashodeep & Co. and their workman referred the dispute to this Tribunal under cl. (d) of sub-section 1 and 2 (A) of section 10 of the Industrial Dispute Act, 1947 for adjudication under the terms of reference as per schedule.

**SCHEDULE**

“Whether the action of the management of ONGC, Ankleshwar projects in terminating the services of Shri Alpeshkumar Patel, Peon w.e.f. 01.08.2003 through its contractor M/s. P.B. Patel & Co., is legal, proper and justified? If not, to what relief the concerned workman is entitled and what other directions are necessary in the matter?”

2. In spite of notices issued, 2nd party workman did not appear in this case whereas the principal employer ONGC (1st party No. 2) appears, executing Vakalatnama in favour of Shri K. V. Gadhia, Advocate. It may be also noted

that the 1st party No.1 M/s. Yashodeep & Co. on its letter head addressing to Under Secretary, Ministry of Labour informed that after end of our contract on 06.03.2001 this contractor has had no concerned with this case and that the concerned workman Alpeshkumar was absent from August, 2000 without any information and subsequently the workman Alpeshkumar approaching to our company to PF amount and he received PF amount and has also resigned. But the concern workman failed to appear in this case. He did not file any S/c on the other hand, principal employer the ONGC, Ankleshwar Projects is appearing on the dates. But in spite of several adjournment, the 2nd party workman failed to appear and to S/c. So, it is not desirable to keep this case pending for further awaiting the filing of S/c by the workman Alpeshkumar.

In such circumstances this reference case is dismissed. Having no merit and the reference is answered in favour of the 1st party that the action of the management of ONGC Ltd., Ankleshwar Projects in termination the service of Shri Alpeshkumar Patel w.e.f. 1.08.2003 through its contractor M/s. P.B. Patel & Co. is legal and proper and justified. The workman concern is not entitled to any relief.

This is my Award.

Let a copy of Award be sent to the appropriate Government for the needful and publication.

B. K. SINHA, Presiding Officer

नई दिल्ली, 21 जनवरी, 2014

**का.आ. 473.**—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 1 की उप-धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा 01 फरवरी, 2014 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय 4 (44 व 45 धारा के सिवाय जो पहले से प्रवृत्त हो चुकी है) अध्याय 5 और 6 [धारा-76 की उप-धारा (1) और धारा 77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है] के उपबंध उड़ीसा राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात् :

“जिला भद्रक की भद्रक तहसील में कुआँस, समराएपुर, बंक, मठसाही तथा गेलपुर के राजस्व गांव”।

[सं. एस-38013/03/2014-एसएस-1]

जार्जकुटी टी. एल., अवर सचिव

New Delhi, the 21st January, 2014

**S.O. 473.**—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st February, 2014 as the date on which

the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter-V and VI (except Sub-Section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force) of the said Act shall come into force in the following areas in the State of Odisha namely: -

"The AREAS COMPRISING OF THE REVENUE VILLAGES OF KUANSH, SAMARAIPUR, BANK, MATHASAH AND GELPUR, in the Tehsil Bhadrak, in the District of Bhadrak.

[No. S-38013/03/2014-SS.1]

GEORGE KUTTY T. L., Under Secy.

नई दिल्ली, 23 जनवरी, 2014

**का.आ. 474.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ओ एन जी सी अहमदाबाद के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 68/2005 एवं 70/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-1-2014 को प्राप्त हुआ था।

[सं. एल-15025/2/2014-आई आर (एम)]  
जोहन तोपनो, अवर सचिव

New Delhi, the 23rd January, 2014

**S.O. 474.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 68/2005 & 70/2005) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. ONGC, Ahmedabad and their workman, which was received by the Central Government on 20-1-2014.

[No. L-15025/2/2014-IR (M)]

JOHAN TOPNO, Under Secy.

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

#### Present :

Binay Kumar Sinha,  
Presiding Officer, CGIT-cum-Labour Court,  
Ahmedabad, Date: 1st May, 2013

**Complaint (CGITA) No. 68/2005**

**And**

**Complaint (CGITA) No.70/2005**

**In**

**Reference (CGITA) No.182/2004**

Under section 33(A) of the Industrial Dispute Act, 1947

Parmar Amrutlal K.-: ..... Complaint case No. 68/2005

**And**

Prajapati Kirtibhai Govindbhai ..... Complaint case No.  
70/2005

Through A.S. Kapoor, then  
Secretary, ONGC,  
Labour Union,  
8- Samrpan Shopping Complex,  
Highway Road, Mehsana

**V/s**

1. Executive Director,  
ONGC Ltd., Western Region Business Centre,  
Makarpura Road, Baroda-9

2. The Secretary,  
Swastik Majdoor Sahkari,  
Kamdar Mandli,  
Sardar Shopping Centre,  
Near Congress Bhavan, Mehsana

3. M/s. Multipurpose Manpower  
Management Services Pvt. Ltd.  
I-Tapsvi Chamber (now at white hall)  
Opp. Dudhsagar Dairy,  
Highway Road,  
Mehsana.

4. M/s. Public Power Mazdoor,  
Kamdar Sahkari Mandli,  
Opp. Dudhsagar Dairy,  
Highway Road,  
Mehsana.

5. M/s. Adarsh Majdoor Kamdar,  
Sahkari Mandli,  
Near Gayatri Mandir,  
Highway Road,  
Mehsana.

6. M/s. Chanasma Taluka Sarvodaya,  
Majdoor Kamdar Sahkari Mandli Ltd.  
C/o Ganfhi Printers, Opp. B.K. Cinema,  
S.T Workshop Road, Mehsana.

7. Group General Manager (Projects)/Asset Manager,  
ONGC Ltd.,  
Mehsana Project, Mehsana

8. M/s. Maha Laxmi Industrial Corporation,  
Plot No. 112/Phase -1,  
GIDC, Mehsana ..... Opponents

(common is both complaint cases)

|                                |   |
|--------------------------------|---|
| For the Complainants :-        | None  |
| For the Opponents No. 1 & 7 :- | Shri K.V. Gadhia,<br>Advocate.<br>Shri M.K. Patel,<br>Advocate. |

### ORDER

These two (CGITA) complaint No.68/200s and 70/2005 arising out of reference (CGITA) No. 182/04 have been filed by the complainants in the matter of their illegal termination of the services on 20.12.2004 by the opposite parties, who are also along with other workman involved in the reference case 182/04 pending for adjudication in which interim order is in operation not to change the status-quo of the 2nd party workman. The allegations made in the complaints are common against the opponents, so, both complaint cases are taken up together for disposal by this common order, pending since pretty long time.

2. The grievances of the complainants are that the O.P. No-2 and 7 are guilty of contravention of provision of section 33 of the I.D Act, 1947 as their service have been terminated illegally by them on 20.12.2004 without any notice, notice pay, retrenchment compensation and even gratuity and that O.P. No. 8 is intermediary i.e. labour contractor and inducted by O.P. No.-1 w.e.f. 01.12.2004 and in main reference, an application for joining him party was filed on 02.02.2005. Thus have alleged that service condition of these workman (complainants) have been changed by the opponents irrespective of continuing of interim order in reference (CGITA 182/2004) and thus O.P's have violated the of provision of section 33 of the I.D. Act, 1947. On these grounds prayer is made to decide the complaints and to reinstate them to the post on which they were working till 19.12.2004 prior to their termination on 20.12.2004 with back wages.

3. The opponent (ONGC-Principal employer) case as per written statement is that the complaints are not maintainable under section 33(A) of the I.D. Act, in view of the claim in reference case as per term of reference for demand for regularisation of contractor workers with ONGC. Ltd. which has to be examined in reference whether the demand is justified or not and also whether it can be said that the ONGC has contravened any provision of section 33 of I.D. Act. It has been denied that O.P. No.7 has terminated the services of these two workmen on 20.12.2004 rather they were contractor worker and there was no sanction of posts of contractor worker so they were terminated by the contractor O.P. No. 8 (M/s. Mahalaxmi Industrial Corporation). These workman were never appointed by the corporation nor they have been terminated by the corporation, rather as per admission by these workman they were appointed by the contractor and the corporation is not responsible whatsoever regarding

their employment / non-employment. Further contention is that main reference for demand of absorption is pending which has yet to be decided and so, relief prayed by these two workmen (complainants) could mean allowing main reference without adjudication on merit.

4. The contractors (O.P. No. 2, 3, 4, 5, 6 & 8) have not appeared in these complaint cases in spite of notice. However, the complainants (workman) of these two cases have adduced their oral evidence and document in support of their grievances. On the other hand NGC Ltd. (O.P. No.- 1 & 7) have contested this case by adducing evidence of witness that the ONGC Ltd. being principal employer is not at all responsible for the alleged termination of the services of these complainants by O.P. No. 8 (M/s. MahaLaxmi).

5. Points for determination is whether irrespective of pendency of the reference case (182/04) which is yet to be adjudicated, the service condition of the complainant workman Parmar Amrutlal K. (Complaint case No- 68/2005) and of Prajapati Kirtibhai Govindbhai (complainant) case No. 70/05 were changed or not, also taking in view that an interim order has been passed in main reference directing the 1st parties principal employer and the contractors to maintain the statusquo.

### FINDINGS

6. Taking into the consideration of the alleged date of termination of these two complainants of case No. 68/05 and 70/05 on 20.12.2004, who are also involved with other workman in reference No. CGITA 182/2004. It can be safely said that these complainants along with other workman- through ONGC. Labour union have raised dispute demanding for their regularisation as an employee of the ONGC Ltd. And this reference case is still pending. Certainly these complainants workman were working in the premises of the ONGC. It is immaterial at this stage whether these complainants of case No. 68/05 and 70/05 were contractor workman who had deputed them alongwith other workman to do the job in the premises of the principal employer (ONGC Ltd.) Mehsana project. More so, interim order had also been passed to maintain statusquo till disposal of the reference case, that means to maintain the working statusquo of the workman involved in the reference case 182/2004 including complainants of the case 68/05 and 70/05 and thus for not disturbing the condition service of any of the workman as the main reference is still pending. But I find that the condition of service of the complainants of these two case 68/05 and 70/05 have been certainly changed which amount to violation of the provision of section 33 of the I.D. Act, 1947. Due to such violation of the provisions under section 33 of the Act for change of condition of service due to termination on 20.12.2004, has enabled the complainant to file complaint u/s 33(A) of the Act for redressal of their grievances against the opponents.

There is no substance in the contention made on behalf of the O.P. No. 1 & 7(ONGC Ltd) that the ONGC (principal employer) has not terminated the services of these two complainants of case No. 68/05 and 70/05 rather they were terminated by the contractor M/s. Mahalaxmi Industrial Corporation. But duty was also cast upon the principal employer (ONGC, Mehsana Project) to keep watch upon the condition of service of these workmen (complainants) involved in the reference case CGITA 182/2004, not to be changed in anyway, but certainly service condition of the workman (complainant of case 68/05 and 70/05) have been changed in the knowledge of the principal employer ONGC (Mehsana projects). It has also to be borne in mind that the contractors are changed at certain intervals, where one contractor goes and another contractor comes to provide service to the principal employer as per job agreement. But when the reference case was pending, the principal employer (ONGC O.P. No. 1 & 7) cannot save their skin that they are not bound as to change in any service condition of workmen due to alleged act of termination by the contractor (O.P. No-8) who must have knowledge about pendency of the reference CGITA No. 182/04 through the principal employer ONGC Ltd. (Mehsana project) and also as to status quo order by way of interim relief granted in the reference case.

7. As per discussion and findings made above that the condition of service of the complainants of case 68/05 and 70/05 have been changed violating the provision under section 33 of the I.D. Act during pendency of reference CGITA. No 182/2004. I find that the complaint case 68/05 and 70/05 are maintainable and the complainants of these case have valid cause of action. So, Shri Parmar Amrutlal K. of complaint case 68/05 and Shri Prajapati Kirtibhai Govindbhai of complaint case 70/05 are directed to be reinstated to the works which they were doing prior to their termination on 20.12.2004. It is not desirable to pass any order as to payment of wages from 20.12.2004, rather it is directed that after reinstatement to that job as they were doing during the pendency of the reference case, they will be paid wages through the contractor M/s. Mahalaxmi Industrial Corporation or if the said contractor has been removed from the work by the principal employer (ONGC Ltd. Mehsana project) O.P. No. -7, then the incoming contractor will pay the monthly wages to the complainants from the date of their reinstatement. O.P. No.1 & 7 being principal employer are directed to look into the matter for the compliance as to reinstatement of these two workman (complainants) of case No. 68/05 and case No. 70/05 and also as to payment of wages to them from the date of their reinstatement.

B. K. SINHA, Presiding Officer

नई दिल्ली, 23 जनवरी, 2014

**का.आ. 475.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स प्रदीप एवं कंस्ट्रक्शन प्राइवेट लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 12/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-1-2014 को प्राप्त हुआ था।

[सं. एल-29012/45/2012-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 23rd January, 2014

**S.O. 475.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.12/2013) of the Central Government Industrial Tribunal/Labour Court Bhubaneswar now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Pradeep Mining & Construction (P) Ltd., Odisha and their workman, which was received by the Central Government on 20-1-2014.

[No. L-29012/45/2012-IR (M)]

JOHAN TOPNO, Under Secy.

#### ANNEXURE

#### CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

#### Present:

Shri J. Srivastava,  
Presiding Officer, C.G.I.T.-cum-Labour  
Court, Bhubaneswar.

#### INDUSTRIAL DISPUTE CASE No. 12/2013

No. L-29012/45/2012 - IR (M), dated 06.02.2013

#### Date of Passing Order - 9th December, 2013

#### Between:

M/s. Pradeep Mining & Construction (P)  
Ltd., Chorda, Jajpur Road, Jajpur, Odisha.

.....1st Party-Management

#### And

Shri Parama Mohanta,  
Vill. Rogada, Po. Chungudipal,  
Thana - Kaliapani, Dist, Jajpur,  
Odisha.

.....2nd Party-Workman.

#### Appearances:

None

.....

For the 1 st Party-  
Management



None ..... For the 2nd Party-  
Workman.

### ORDER

Case taken up. Both the parties are absent. On behalf of the 2nd Party-workman a petition was moved for fifteen days time to file statement of claim on 21.3.2013, which was allowed on the very same date, but no statement of claim was filed despite lapse of three 'months' time. The 2nd party-workman appeared in the court on 25.6.2013. On that date also no statement of claim was filed. Thereafter four dates have been fixed. Neither the 2nd Party-workman appeared nor filed any statement of claim till date. Hence it appears that he is not interested in prosecuting his case. It will be a futile attempt to keep the case pending indefinitely. He might have either settled the dispute with the 1st Party-Management out of the court or left the matter as it stands.

2. Under these circumstances, the only option left is to pass a no dispute award in the case. Accordingly a no dispute award is passed.

3. Reference is answered accordingly.

Dictated & Corrected by me.

J. SRIVASTAVA, Presiding Officer

नई दिल्ली, 23 जनवरी, 2014

**का.आ. 476.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जी एस अटवाल एंड कंपनी (इंजीनियरिंग) प्राइवेट लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 21/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-1-2014 को प्राप्त हुआ था।

[सं. एल-29012/31/2010-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 23rd January, 2014

**S.O. 476.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.21/2012) of the Central Government Industrial Tribunal/Labour Court Bhubaneswar now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s.G. S. Atwal & Co. (Engineer) (P) Ltd., and their workman, which was received by the Central Government on 20-1-2014.

[No.L-29012/31/2010-IR (M)]

JOHAN TOPNO, Under Secy.

### ANNEXURE

### CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT, BHUBANESWAR

#### Present:

Shri J. Srivastava,  
Presiding Officer, C.G.I.T.-cum-Labour  
Court, Bhubaneswar.

#### INDUSTRIAL DISPUTE CASE No. 21/2012

**Date of Passing Order -23rd July, 2013**

#### Between:

1. M/s. G.S. Atwal & Co. (Engineer) (P) Ltd.,  
C/o. TATA Steel Ltd., Jajpur,  
Sukinda Chromite Mines At./Po. Kalarangiatta,  
Jajpur, Odisha.

2. The Manager, TATA Steel Ltd.,  
Sukinda Chromite Mines,  
At./PO. Kalarangiatta, Jajpur, Odisha.

3. M/s. Shiva Engineer, Sub-Contractor,  
Sukinda Chromite Mines,  
At./PO. Kalarangiatta, Jajpur, Odisha.

...1st Party-Managements.

#### And

Their workman Shri Sangram Mahakud,  
At. Ostia, PO. Chingudipal, PS - Kaliapani,  
Dt. Jajpur, Odisha.

...2nd Party-Workman.

#### Appearances:

None ..... For the 1 st Party-  
Management.

None ..... For the 2nd Party-  
Workman.

### ORDER

Case taken up. None is present for the 1st Party-Management No. 1 and 2 and the 2nd Party-Workman. Only the proprietor of the 1st Party-Management No. 3 Shri Shyam Prasad Moharana is present.

2. This reference was received in the office of this Tribunal/Labour Court on 30.1.2012. Since then the 2nd Party workman has been taking time for filing of statement of claim by moving time petitions. He later took a plea that he has moved the Ministry for amendment of schedule of

the reference. A corrigendum regarding amendment of the schedule of the reference was received in the office of this Tribunal/Labour Court on 8.4.2013. Even after amendment of the schedule, the 2nd Party-workman despite giving sufficient opportunity has not filed any statement of claim till this date. Hence it may be presumed that the 2nd Party-workman is either not interested in prosecuting his case or might have settled the dispute amicably with the Management out of the court.

3. Therefore a no-dispute award has to be passed in the case since the matter cannot be allowed to linger on indefinitely.

4. Accordingly a no-dispute award is passed and the reference is answered in the above terms.

Dictated & Corrected by me.

J. SRIVASTAVA, Presiding Officer

नई दिल्ली, 23 जनवरी, 2014

**का.आ. 477.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स ट्रिनिटी कमर्शियल प्राइवेट लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 32/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-1-2014 को प्राप्त हुआ था।

[सं. एल-29012/7/2013-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 23rd January, 2014

**S.O. 477.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 32/2013) of the Central Government Industrial Tribunal/Labour Court Bhubaneswar now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Trinity Commercial Pvt. Ltd., and their workman, which was received by the Central Government on 20-1-2014.

[No. L-29012/7/2013-IR (M)]

JOHAN TOPNO, Under Secy.

#### ANNEXURE

#### CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT, BHUBANESWAR

#### Present:

Shri J. Srivastava,  
Presiding Officer, C.G.I.T.-cum-Labour  
Court, Bhubaneswar.

#### INDUSTRIAL DISPUTE CASE No. 32/2013

No. L-29012/7/2013 - IR(M), dated 25.04.2013

**Date of Passing Order 13th November, 2013**

#### Between:

M/s. Trinity Commercial Pvt. Ltd.,  
Contractor of M/s. Serajuddin & Co.  
Balda Block Iron Mines,  
At./PO. Baneikela, Via. Joda,  
Dist. Keonjhar, Odisha.

...1st Party-Management

#### And

Shri Pawan Kumar Gope,  
S/o. Dambarudhar Gope,  
At/PO. Basira, Via. Joda,  
Dist. Keonjhar, Odisha.

....2nd Party-Workman

#### Appearances:

None ..... For the 1st Party-  
Management

None ..... For the 2nd Party-  
Workman

#### ORDER

Case taken up. None of the parties has responded. No statement of claim has been filed by the 2nd Party-workman despite sending notices through ordinary as well as registered post, which although have been received back un-served, but, the disputant-workman himself has to take proper steps for further prosecution of his case. He seems to have taken no care of his case despite four dates having been fixed in the case. In expectation of filing of statement of claim for further prosecuting the case no further time can be allowed as there is no way left to search out the 2nd Party-workman and persuade him to appear and file his statement of claim.

2. Under these circumstances it will be a futile attempt to keep the case pending for long. Therefore the reference is liable to be returned to the Government of India in the concerned Ministry for necessary action at its end.

3. The reference is returned to the Government for necessary action at its end.

Dictated & Corrected by me.

J. SRIVASTAVA, Presiding Officer

नई दिल्ली, 23 जनवरी, 2014

**का.आ. 478.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स ट्रिनिटी कमर्शियल प्राइवेट लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 33/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-01-2014 को प्राप्त हुआ था।

[सं. एल-29012/6/2013-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 23rd January, 2014

**S.O. 478.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 33/2013) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Trinity Commercial Pvt. Ltd. and their workman, which was received by the Central Government on 20-01-2014

[No. L-29012/6/2013-IR (M)]

JOHAN TOPNO, Under Secy.

#### ANNEXURE

#### CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

##### Present:

Shri J. Srivastava,  
Presiding Officer, C.G.I.T.-cum-Labour  
Court, Bhubaneswar.

##### INDUSTRIAL DISPUTE CASE No. 33/2013

No. L-29012/6/2013-IR (M), Dated 13-05-2013

**Date of Passing Order 9th November, 2013**

##### Between:

M/s. Trinity Commercial (Pvt.) Ltd.,  
Contractor of M/s. Serajuddin & Co.  
Balda Block Iron Mines,  
At./Po. Baneikela, Via. Joda,  
Dist. Keonjhar, Odisha.

...1st Party- Management

##### And

Shri Bikram Bodra,  
S/o. Ganesh Bodra,  
At./Po. Basira, Via. Joda,  
Dist. Keonjhar, Odisha.

...2nd Party-Workman

##### Appearances:

None ... For the 1st Party-Management  
None ... For the 2nd Party-Workman

#### ORDER

Case taken up. None of the parties has responded. No Statement of claim has been filed by the 2nd Party-workman despite sending notices through ordinary as well as registered post, which although have been received back un-served, but the disputant-workman himself has to take proper steps for further prosecution of his case. He seems to have taken no care of his case despite four dates having been fixed in the case. In expectation of filing of statement of claim for further prosecuting the case no further time can be allowed as there is no way left to search out the 2nd Party-workman and persuade him to appear and file his statement of claim.

Under these circumstances it will be a futile attempt to keep the case pending for long. Therefore the reference is liable to be returned to the Government of India in the concerned Ministry for necessary action at its end.

The reference is returned to the Government for necessary action at its end.

Dictated & Corrected by me.

J. SRIVASTAVA, Presiding Officer

नई दिल्ली, 23 जनवरी, 2014

**का.आ. 479.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स प्रदीप एवं कंस्ट्रक्शन प्राइवेट लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 94/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-01-2014 को प्राप्त हुआ था।

[सं. एल-29012/46/2012-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 23rd January, 2014

**S.O. 479.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 94/2012) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Pradeep Mining & Construction (P) Ltd. and their workman, which was received by the Central Government on 20-01-2014.

[No. L-29012/46/2012-IR (M)]

JOHAN TOPNO, Under Secy.

#### ANNEXURE

#### CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

##### Present:

Shri J. Srivastava,  
Presiding Officer, C.G.I.T.-cum-Labour  
Court, Bhubaneswar.

**INDUSTRIAL DISPUTE CASE No. 94/2012**

Date of Passing Order - 28th November, 2013

**Between:**M/s. Pradeep Mining & Construction (P) Ltd.,  
Chorda, Jajpur Road, Jajpur, Odisha.

... 1st Party-Management

**And**Their workman Shri Kailash Maharana,  
Hanuman Bazar, Kaliapani, Sukinda,  
Dist. Jajpur, Orissa.

... 2nd Party-Workman

**Appearances:**None ... For the 1st Party-Management  
None ... For the 2nd Party-Workman**ORDER**

A reference under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 has been made to this Tribunal/Labour Court vide Ministry of Labour, Government of India's letter No. L-29012/46/2012-IR(M), dated 13-12-2012 for adjudication of an industrial dispute existing between M/s. Pradeep Mining & Construction (P) Ltd., and their workman in respect of the following matter :-

"Whether it is justified on the part of the workman Shri Kailash Maharana not to receive the terminal benefits offered by the contractor M/s. Pradeep Mining & Construction (P) Limited, Jajpur Road, Odisha on the ground that he should be paid wages for the period from 7-4-2012 to 4-9-2012 actually not worked? If not, what relief the workman is entitled to ?"

2. In pursuance of the letter of reference the 2nd Party-workman was required to file his statement of claim within fifteen days of receipt of the order of reference, but he did not file his statement of claim within the stipulated period. Two notices on 13-6-2013 and 1-8-2013 under registered cover of post were issued to him to file his statement of claim, but he did not file any statement of claim nor bothered to appear in the court. A notice was also sent to him through speed post for appearing on 24-11-2013 along with the 1st Party-Management to settle the dispute amicably with the management at National Lok Adalat. But he did not respond. He has even not filed any statement of claim. Therefore, it is presumed that he has either settled his dispute amicably with the 1st Party-Management out of court or did not wish to further proceed with the case. Hence in such a situation there is no option but to pass a no-dispute award in the case as the case cannot be kept pending indefinitely.

3. Consequently a no-dispute award is passed in the case.

4. Reference is answered accordingly.

Dictated & Corrected by me.

J. SRIVASTAVA, Presiding Officer

नई दिल्ली, 23 जनवरी, 2014

**का.आ. 480.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स सरगैपल्ली माइन प्रोजेक्ट ऑफ हिंदुस्तान जिंक लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 80/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-01-2014 को प्राप्त हुआ था।

[सं. एल. 43012/14/2000-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 23rd January, 2014

**S.O.480.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 80/2001) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Sargipali Mine Project of Hindustan Zinc Ltd. and their workman, which was received by the Central Government on 20-01-2014.

[No. L-43012/14/2000-IR (M)]

JOHAN TOPNO, Under Secy.

**ANNEXURE****CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-  
CUM-LABOUR COURT, BHUBANESWAR****Present:**

Shri J. Srivastava,  
Presiding Officer, C.G.I.T.-cum-Labour  
Court, Bhubaneswar.

**Tr. INDUSTRIAL DISPUTE CASE No. 80/2001**  
**Date of Passing Award - 3rd December, 2013**

**Between:**

The Superintendent (Mines),  
Sargipali Mine Project of Hindustan Zinc Ltd.,  
At./Po. Zinc Nagar, Dist. Sundargarh,  
Orissa - 770022.

... 1st Party-Management

**And**

Their workman Shri Mahendra Kumar Choudhary,  
At./Po. Bhana, Dist. Sundargarh, Orissa - 770002.

... 2nd Party-Workman

**Appearances:**

None : For the 1st Party-Management  
M/s. A. Mishra, : For the 2nd Party-Workman  
Advocate



### AWARD

The Government of India in the Ministry of Labour has referred an industrial dispute existing between the employers in relation to the management of Sargipali Mine Project of Hindustan Zinc Limited and their workman in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 vide their letter No. L-43012/14/2000-IR(M) dated 20.09.2000 in respect of the following matter :—

“Whether the action of the management of Sargipali Mine Project of Hindustan Zinc Ltd., in discharging Sh. Mehendra Kumar Choudhary w.e.f. 31st October, 1994 is justified? If not, to what relief the workman is entitled?”

2. The 2nd Party-workman has filed his statement of claim alleging that he joined the 1st Party-Management on 7.8.1983 in Category-II as Miner-B and continued to discharge his efficient services to the satisfaction of all concerned till 31.10.1994. He also got promotion twice to Category-III and Category- IV in the meantime. In the month of August, 1993 he was cheated by one of his friends for which he had lost substantial amount of money and became mentally depressed and lost his mental balance. He took rest till 30.7.1994 and then approached the Management to join duty on 31.7.1994, getting fitness from his consulting doctor. The Management first pressed to receive the charge-sheet dated 10.6.1994 and then allowed him to join the duty. Accordingly he received the charge-sheet on 31.7.1994 and continued to work till 31.10.1994. On the very same date he was discharged from service. Pursuant to the said charge-sheet he submitted his explanation on 1.8.1994 with the request to exonerate him from the alleged charges. The Management, without considering his humble request and explanation, conducted enquiry in a most perfunctory manner and finally held him guilty and discharged him from service with effect from 31.10.1994. The enquiry was held without following the principles of natural justice and proper procedure. He was also not afforded with any opportunity to defend the alleged charges. No list of documents and witnesses was either submitted or supplied to him nor any witness was examined to substantiate the charges. He was not allowed to cross examine the statements so recorded in the proceedings. As such the enquiry suffers from latches and gross irregularities. He was not even afforded with minimum opportunity to produce the medical certificate to substantiate his assertions about taking medical treatment at Burla Hospital. Therefore the enquiry held is unfair, improper and perverse and the punishment awarded to him is bad, illegal and not sustainable in the eye of law. The punishment inflicted upon is shockingly disproportionate. Therefore the 1st Party-Management be directed to reinstate him in service with full back wages and all consequential attendant benefits.

3. The 1st Party-Management in its written statement has alleged that the 2nd Party-workman was habitual unauthorized absentee. He remained unauthorizedly absent from duty for 283 days in 1991, 159 days in 1992, 213 days in 1993 and 225 days in 1994 till the month of September. The 2nd Party-workman never brought the fact of his mental depression to the knowledge of the Management. He was never treated in the Company's Hospital for mental depression. His treatment at Burla Hospital is not acceptable as he never produced a single paper to substantiate his claim. He was allowed to join his duties on 31.7.1994 after necessary medical examination. For his long unauthorized absence from duty the Management had issued charge sheet to him on 10.6.1994, on his given address. When he joined his duties on 31.7.1994, he was again served with a charge-sheet dated 10.6.1994. Since the 2nd Party-workman had not submitted any medical report/certificate from any authorized doctor about his fitness to join duty, he was allowed to join duty only after medical check up. There was no occasion for the Management to compel the workman to receive the charge-sheet dated 10.6.1994 as a pre-condition to allow him to join duty. Remaining absent unauthorizedly for a period of 265 days from September, 1993 to 9.6.1994 is a misconduct under clause 17 (26) of the Certified Standing Order of the Company. Enquiry was conducted in a proper manner giving adequate opportunity of hearing to the workman. During the enquiry the workman admitted the charges and explained that it happened due to his mental imbalance and his treatment at Burla Hospital. He also admitted that he has not submitted any document to that effect. The workman was also given opportunity to examine witnesses in support of his case, but he did not examine any witness on his behalf. Thereafter the enquiry report was submitted by the Enquiry Officer on 11.7.1994 to the Management holding the charges as proved. Show cause notice was issued to him on 10.10.1994 to which the workman submitted his explanation/show cause on 16.10.1994. The workman never objected to the action of the Enquiry Officer being unfair, improper or perverse. So the enquiry proceedings are fair, proper and in accordance with law satisfying the ingredients of natural justice. After considering the explanation submitted by the workman, the Management imposed the punishment of simple discharge from service of the Company with effect from 31.10.1994. The workman preferred an appeal against the order of punishment, which was rejected by the appellate authority. Thus the entire series of action taken by the Management resulting in discharge of the workman from service for his habitual unauthorized absence from duty is justified, proper and legal and in accordance with the provisions of the Certified Standing Order of the Sargipali Mines. The Management has craved leave to adduce further evidence to substantiate the charges framed against the workman in-case the Tribunal comes to a conclusion that the enquiry conducted by the employer was not fair, proper, reasonable and sustainable in the eye of law.

4. In view of the pleadings of the parties following issues are framed.

### ISSUES

1. Whether the Domestic Enquiry held against the 2nd Party M.K. Choudhury is fair and proper?
2. Whether the punishment of discharge imposed upon the 2nd Party is shockingly disproportionate?
3. To what relief the 2nd Party-workman is entitled?

5. On the petition of the 1st Party-Management Issue No. 1 was taken up as preliminary issue and the 1st Party-Management was directed to lead evidence first by order dated 11.4.2003. The case continued to be fixed for evidence on Issue No. 1, but no evidence was led by the 1st Party-Management. Meanwhile the proceedings of the case were stayed by the Hon'ble High Court and an order for staying further proceeding of the case was passed by my learned predecessor on 28.4.2006. Stay order was vacated by the Hon'ble High Court of Orissa vide its order dated 3.3.2012. Thereafter notice was issued to the parties for appearance. Despite notice the 1st Party-Management did not appear while the 2nd Party-workman Shri M.K. Choudhury filed his sworn affidavit in evidence on Issue No. 1, copy of which was sent to the 1st Party-Management through speed post as endorsed by the 2nd Party-workman in his affidavit. As no one appeared on behalf of the 1st Party-Management to cross examine the witness, cross examination was closed.

6. The 1st Party-Management has thus not adduced any evidence on Issue no. 1.

### FINDINGS

#### ISSUE No. 1

7. Although the burden to prove that the domestic enquiry conducted against the 2nd Party-workman was fair and proper lies on the 1st Party-Management, yet on having no evidence led by the Management the decision on this issue rests on documentary evidence filed by both the parties plus affidavit evidence of the 2nd Party-workman. The fact of habitual unauthorized absence from duty of the 2nd Party-workman cannot be denied on the face of the respective pleadings of the parties and it can also not be denied that for habitual unauthorized absence of the 2nd party-workman from duty extending from the month of September, 1993 to 9.6.1994 a charge-sheet was issued to him on 10.6.1994, but according to the 2nd Party-workman it was served on him on 31.7.1999 when he reported for duty. There is no documentary evidence on record to show that the charge-sheet was earlier sent to or served on the 2nd Party-workman by the Enquiry Officer or the Management before 31.7.1994. The Enquiry Officer completed the enquiry only in one sitting held on 2.9.1994 and noted down in the minutes of the proceeding dated 2.9.1994 that Shri M.K. Choudhury on reading out the

charge-sheet by the Enquiry Officer accepted the charges and also admitted that he had not submitted any medical certificate for getting treatment at Burla Hospital. After that the Enquiry Officer asked the management representative to produce evidence in support of the charge-sheet. The management representative only produced the original muster roll to prove the attendance of Shri M.K. Choudhury. Thereafter it was noted down in the minutes of the proceeding that Shri M.K. Choudhury apologised for the fault and promised not to repeat the same in future. With this the enquiry was declared closed. On the basis of the above minutes of the enquiry proceeding held on 2.9.1994 enquiry report was submitted to the Disciplinary Authority on 11.9.1994 finding the charges proved on the basis of admission of the charge-sheeted employee. On this enquiry report the 2nd Party-workman was inflicted with penalty of simple discharge from service of the company by the Senior Manager (Mines) as disciplinary authority on 28.10.1994 after considering his explanation dated 1.8.1994.

8. It is worth mentioning here that no confessional statement of the charge-sheeted employee was recorded by the Enquiry Officer. During enquiry proceeding from the side of the Management even no formal statement of any witness or the management representative was recorded by the Enquiring Officer about the charges and the factual allegations constituting the said charges. No documents except the muster roll was produced and proved by the management representative before the Enquiry Officer. There is nothing about the explanation submitted by the charge-sheeted employee with regard to his unauthorized absence from duty. The charge-sheeted employee i.e. the 2nd Party-workman was not given any opportunity to adduce any evidence either of himself or any of his witnesses by the Enquiry Officer to explain the circumstances under which he remained absent. The 2nd Party-workman has stated in his affidavit that he had submitted the fitness certificate from the company's Doctor. Xerox copy of the medical certificate of Prof. G.C. Das of V.S.S. Medical College, Burla is on record. However that does not make any difference in view of the fact that the domestic enquiry conducted by the 1st Party-Management against the 2nd Party-workman was not conducted in a fair and proper manner. The principles of natural justice have been violated and no opportunity was given to the 2nd Party-workman to defend his case. The 2nd Party-workman has been held guilty of the charges without recording any statement of the witnesses on either side and the whole enquiry was conducted only in one sitting. The enquiry was based on the alleged admission of the charges by the 2nd Party-workman, but his admission was not recorded separately under his signature. What the Enquiry Officer has recorded about the admission of charges by the 2nd Party-workman in his minutes of proceeding cannot be legally read and treated as admission of the charges by the 2nd Party-workman. The disciplinary authority has also

not considered this aspect of the matter and passed the order of punishment mechanically discharging the 2nd Party-workman from service, which cannot be held to be legal and justified.

9. In view of the above the domestic enquiry conducted against the 2nd Party-workman Shri M. K. Choudhury cannot be held to be fair, proper and legal. This issue is decided in the negative and against the 1st Party-Management.

#### ISSUE No. 2

10. Since the domestic enquiry held against the 2nd party-workman is not found to be fair and proper the punishment of discharge inflicted upon the 2nd Party-workman cannot be supported. The question of disproportionate punishment does not arise in the facts and circumstances of the case. As such no verdict is required on this issue.

#### ISSUE No. 3

11. As the domestic enquiry held against the 2nd party-workman has not been found to be fair and proper and in accordance with the principles of natural justice, the 2nd party-workman is entitled to get the relief of reinstatement in service, provided he has not attained the age of superannuation, with continuity of service and consequential service benefits. Since the matter is pretty old and the service of the 2nd Party-workman was dispensed with, with effect from 31.10.1994 and a period of 19 years has since elapsed, the relief of back wages cannot be awarded. However, it will be proper and expedient in the interest of justice to award him compensation to the tune of Rs. 5.0 lacs for the period he remained out of service. The award is passed accordingly and the 1st party-Management is directed to reinstate the 2nd Party-workman in service with continuity of service and all consequential service benefits and pay him a sum of Rs. 5.0 lacs within a period of three months from the date of publication of the award.

12. The reference is answered accordingly.

J. SRIVASTAVA, Presiding Officer

नई दिल्ली, 23 जनवरी, 2014

**का.आ. 481.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दिल्ली इंटरनेशनल एअरपोर्ट लिमिटेड, नई दिल्ली के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय 1, दिल्ली के पंचाट (संदर्भ संख्या 140/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-01-2014 को प्राप्त हुआ था।

[सं. एल-11012/6/2013-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 23rd January, 2014

**S.O. 481.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 140/2013) of the Central Government Industrial Tribunal/Labour Court No.1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Delhi International Airport Ltd., New Delhi and their workman, which was received by the Central Government on 20-1-2014.

[No.-L-11012/6/2013-IR (M)]

JOHAN TOPNO, Under Secy.

#### ANNEXURE

**BEFORE DR. R. K. YADAV, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL  
NO. I, KARKARDOOMA COURTS COMPLEX, DELHI**

**I.D. No.140/2013**

Shri Abhishek Wilson,  
House No. 20, Gali No 4, Block B,  
Kamal Vihar, Kamallpur, Burari,  
New Delhi 110084

...Workman

#### Versus

1. M/s. Delhi International Airport Ltd.,  
New Udan Bhawan, Terminal-III,  
IGI Airport, New Delhi - 110037

2. M/s. ICS System Pvt. Ltd.,  
B-371, Third Floor, Meera Bagh,  
New Delhi - 110063

...Management

#### AWARD

In the year 2008, Airport Authority of India entered into an agreement for operation, management and development of Indira Gandhi International Airport, New Delhi with M/s. Delhi International Airport Ltd. (in short the management). On the strength of the agreement, referred above, job of operation of passenger boarding bridges (in short PBB) at Indira Gandhi International Airport and domestic airport came within the purview of the management. The management engaged M/s. ICS System Ltd. (in short the contractor) for operation and maintenance of PBB at IGI Airport as well as domestic airport at New Delhi. The contractor employed 230 workers consisting of clerks, executives and workmen of various categories. Persons employed by the contractor formed their union with the name of IGIA Aerobridge Workers Union (in short the union). When the contractor came to know about formation of the said union, it withheld photo identity cards of Shri James Massey and Shri Praveen Sharma, President and Vice President respectively of the union, with a view to coerce and restrain the workers not to organize for the



purpose of collective bargaining. A complaint was made to the Conciliation Officer on 02.12.2011 against the said unfair labour practice, who entered into conciliation proceedings.

2. On 12.02.2012, an official of the management misbehaved with the Vice President and two other active workers of the union. It resulted into an altercation. The management initiated action and did not allow the workers to enter the premises of the Airport. The union served strike notice on 14.03.2012. Again conciliation proceedings were initiated, which failed on 30.03.2012. Workers participated in the strike on 12.04.2012 and as such the contractor dismissed 36 workmen from service. The union raised an industrial dispute in that regard. On failure of conciliation proceedings, the appropriate Government referred the dispute to this Tribunal for adjudication, vide order No. L-11011/7/2012-IR(M), New Delhi dated 30.01.2013, with following terms :

"Whether the action of the management of M/s ICS Systems Pvt. Ltd.; New Delhi in dismissing 36 workmen (list enclosed) from service with effect from 10.05.2012 without holding any disciplinary proceedings and further in violation of section 33(1)(b) of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief the said workmen are entitled to?"

Industrial dispute, referred above, has been registered as ID No. 23/2013 and claimant union filed its claim statement on 13.03.2013. The management as well as the contractor filed their written statement, which were followed by rejoinder. Thereafter, the matter is listed for 03.10.2013 for evidence of the parties.

4. During pendency of the aforesaid dispute for adjudication, the appropriate Government referred the present dispute, vide order No. L-11 012/6/2013-IR(M), New Delhi dated 09.10.2013 with following terms:

"Whether the action of the management of M/s. ICS System Pvt. Ltd. in terminating the service of Shri Abhishek Wilson, ex-Supervisor with effect from 10.05.2012 is legal and justified? What relief the workman is entitled to and from which date?"

5. It would not be out of place to mention that the name of Shri Abhishek Wilson finds place at serial No. 2 of the list annexed by the appropriate Government alongwith industrial dispute, registered as ID No. 23/2013. Thus, it emerges that during pendency of ID No. 23/2013, present dispute has been referred for adjudication on the same proposition, which would be adjudicated in ID No. 23/2013.

6. I have heard Shri Raju Gupta, authorised representative of M/s. ICS Systems Pvt. Ltd., besides perusal of record of the aforesaid Industrial dispute. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:-

7. Powers of the appropriate Government, to make reference of an industrial dispute, were considered by the Apex Court in Secretary, India Tea Association [2000 (2) LLN 25] and summarized as follows:

"1. The appropriate Government would not be justified in making a reference under Section 10 of the Act without satisfying itself on the facts and circumstances brought, to its notice that an industrial dispute exists or apprehended and if such a reference is made it is desirable wherever possible, for the government to indicate the nature of dispute in the order or reference;

2. The order of the appropriate Government making a reference under Section 10 of the Act is an administrative order and not a judicial or quasi-judicial one and the Court, therefore, cannot canvass the order of the reference closely to see if there was any material before the Government to support its conclusion, as if it was a judicial or quasi-judicial order;

3. An order made by the appropriate government under Section 10 of the Act being an administrative order no lis is involved, as such an order is made on the subjective satisfaction of the Government;

4. If it appears from the reasons given that the appropriate Government took into account any consideration irrelevant or foreign material, the Court may in a given case consider the case for a writ of mandamus and;

5. It would, however, be open to party to show that what was referred by the Government was not an industrial dispute within the meaning of the Act."

8. Appropriate Government has no power, either express or implied, to cancel or withdraw a reference after it has made order of reference. Order cancelling or withdrawing or superseding the reference would therefore be incompetent and invalid and would be liable to be struck down being ultra vires the powers of the appropriate Government under Industrial Disputes Act, 1947, (in short the Act) ruled the Apex Court in D.N. Ganguly [1958 (2) LLJ 634]. However, the appropriate Government under section 10 of the Act, has powers to add to or amplify the matter already referred for adjudication. It has no power to supersede the old reference in such a way as to effect withdrawal of the reference validly made. Any amendment, addition or modification which the Government can make subsequent to the order of reference cannot go to the length of superseding or withdrawing the original reference. Though Government has power to rectify or correct previous order of reference, under the guise of amending or correcting the previous order of reference, order of amendment or corrigendum tantamounting to suppression of the previous order of reference, cannot be allowed to be



made because such order would be ultra vires the powers of the Government.

9. The appropriate Government can amend the reference by way of addition or modification so long as amendment does not have the effect of withdrawing or superseding the reference already made. Cardinal principle in determination of the question as to whether amendment amounts to correction of clerical error or entertaining of fresh material, is whether the relief claimed by the aggrieved party in the original notification can be granted in the proceedings which are to take place in pursuance of the amended notification. Though the Government has inherent powers to correct apparent errors in its reference order, yet that does not mean that the Government has power to review or articulate its earlier order of reference. Reference can be made to the precedent in *Modern Foundry and Machine Systems Ltd.* (1999 LLJ 1137).

10. In the light of legal principles, referred above, it would be taken note of as to whether the present reference order amounts to withdrawal of the reference order relating to the dispute concerning the present claim. As pointed out above, reference order, which has been registered as I.D.No.23/2013, requires this Tribunal to adjudicate as to whether action of the management of ICS Systems Pvt. Ltd. New Delhi, in dismissing the claimant (whose name is there at serial No. 2 of the list of 36 workmen sent along with the reference order) from service with effect from 10.05.2012 without holding any disciplinary proceedings and further in violation of Section 33(1)(b) of the Act is legal and justified. Thus, it is evident that in the earlier reference order, this Tribunal is supposed to adjudicate as to whether dismissal of the claimant by the Contractor without holding an enquiry and in violation of provisions of section 33(1)(b) of the Act is legal and justified. Question, so raised, encompasses the legality and justifiability of the dismissal order, along with question as to whether such action is violative of the provisions of section 33(1)(b) of the Act.

11. In the reference order, under consideration, same question has been projected by the appropriate Government. Thus, it emerges that as far as present claim is concerned, the appropriate Government attempts to withdraw the earlier reference order and to substitute it with the present reference order. It is not an act of amending any clerical omission or adding some other question, which was not earlier referred for adjudication. During pendency of the dispute, the appropriate Government has no power to withdraw it from adjudication and to issue fresh reference order on the very terms which were under consideration with the Tribunal. Thus, it is evident that the subsequent reference is ultra vires of the powers of the appropriate Government.

12. In view of the above discussion, it is concluded that appropriate Government was not competent to make this reference order during pendency of the industrial

dispute registered as I.D. No. 23/2013. The reference order is, therefore, discarded, since it cannot grant jurisdiction to this Tribunal to adjudicate it. The Tribunal is seized of I.D. No. 23/2013, which would be adjudicated in due course. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated : December 12, 2013

Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 23 जनवरी, 2014

**का.आ. 482.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दिल्ली इंटरनेशनल एअरपोर्ट लिमिटेड नई दिल्ली के प्रबंधन के संबंध में निोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय 1, दिल्ली के पंचाट (संदर्भ संख्या 142/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-01-2014 को प्राप्त हुआ था।

[सं. एल-11012/9/2013-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 23rd January, 2014

**S.O. 482.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.142/2013) of the Central Government Industrial Tribunal/Labour Court No.1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Delhi International Airport Ltd, New Delhi and their workman, which was received by the Central Government on 20/1/2014.

[No. L-11012/9/2013-IR (M)]

JOHAN TOPNO, Under Secy.

#### ANNEXURE

**BEFORE DR.R.K.YADAV, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL  
NO.1, KARKARDOOMA COURTS COMPLEX, DELHI**

**I.D. No. 142/2013**

Shri Manish Sharma,  
S/o Shri Ved Prakash Sharma,  
H-329, Raj Nagar, Palam Colony,  
Gali No. 6,  
New Delhi-110045

...Workman

#### Versus

1. M/s. Delhi International Airport Ltd.,  
New Udan Bhawan, Terminal-III,  
IGI Airport, New Delhi - 110037

2. M/s. ICS System Pvt. Ltd.,  
B-371, Third Floor, Meera Bagh,  
New Delhi - 110063

...Management

**AWARD**

In the year 2008, Airport Authority of India entered into an agreement for operation, management and development of Indira Gandhi International Airport, New Delhi with M/s Delhi International Airport Ltd. (in short the management). On the strength of the agreement, referred above, job of operation of passenger boarding bridges (in short PBB) at Indira Gandhi International Airport and domestic airport came within the purview of the management. The management engaged M/s ICS System Ltd. (in short the contractor) for operation and maintenance of PBB at IGI Airport as well as domestic airport at New Delhi. The contractor employed 230 workers consisting of clerks, executives and workmen of various categories. Persons employed by the contractor formed their union with the name of IGIA Aerobridge Workers Union (in short the union). When the contractor came to know about formation of the said union, it withheld photo identity cards of Shri James Massey and Shri Praveen Sharma, President and Vice President respectively of the union, with a view to coerce and restrain the workers not to organize for the purpose of collective bargaining. A complaint was made to the Conciliation Officer on 02.12.2011 against the said unfair labour practice, who entered into conciliation proceedings.

2. On 12.02.2012, an official of the management misbehaved with the Vice President and two other active workers of the union. It resulted into an altercation. The management initiated action and did not allow the workers to enter the premises of the Airport. The union served strike notice on 14.03.2012. Again conciliation proceedings were initiated, which failed on 30.03.2012. Workers participated in the strike on 12.04.2012 and as such the contractor dismissed 36 workmen from service. The union raised an industrial dispute in that regard. On failure of conciliation proceedings, the appropriate Government referred the dispute to this Tribunal for adjudication, vide order No. L-11 011/7/2012-IR(M), New Delhi dated 30.01.2013, with following terms :

"Whether the action of the management of M/s ICS Systems Pvt. Ltd.; New Delhi in dismissing 36 workmen (list enclosed) from service with effect from 10.05.2012 without holding any disciplinary proceedings and further in violation of section 33(1)(b) of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief the said workmen are entitled to?"

3. Industrial dispute, referred above, has been registered as ID No.23/2013 and claimant union filed its claim statement on 13.03.2013. The management as well as the contractor filed their written statement, which were followed by rejoinder. Thereafter, the matter is listed for 03.10.2013 for evidence of the parties.

4. During pendency of the aforesaid dispute for adjudication, the appropriate Government referred the present dispute, vide order No. L-11 012/9/2013-IR(M), New Delhi dated 09.10.2013 with following terms:

"Whether the action of the management of M/s ICS System Pvt. Ltd. in terminating the service of Shri Manish Sharma, ex-Supervisor with effect from 10.05.2012 is legal and justified? What relief the workman is entitled to and from which date?"

5. It would not be out of place to mention that the name of Shri Manish Sharma finds place at serial No. 6 of the list annexed by the appropriate Government alongwith industrial dispute, registered as ID No. 23/2013. Thus, it emerges that during pendency of ID No. 23/2013, present dispute has been referred for adjudication on the same proposition, which would be adjudicated in ID No. 23/2013.

6. I have heard Shri Raju Gupta, authorised representative of M/s ICS Systems Pvt. Ltd., besides perusal of record of the aforesaid Industrial dispute. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:-

7. Powers of the appropriate Government, to make reference of an industrial dispute, were considered by the Apex Court in Secretary, India Tea Association [2000 (2) LLN 25] and summarized as follows:

"1. The appropriate Government would not be justified in making a reference under Section 10 of the Act without satisfying itself on the facts and circumstances brought, to its notice that an industrial dispute exists or apprehended and if such a reference is made it is desirable wherever possible, for the government to indicate the nature of dispute in the order or reference;

2. The order of the appropriate Government making a reference under Section 10 of the Act is an administrative order and not a judicial or quasi-judicial one and the Court, therefore, cannot canvass the order of the reference closely to see if there was any material before the Government to support its conclusion, as if it was a judicial or quasi-judicial order;

3. An order made by the appropriate government under Section 10 of the Act being an administrative order no lis is involved, as such an order is made on the subjective satisfaction of the Government;

4. If it appears from the reasons given that the appropriate Government took into account any consideration irrelevant or foreign material, the Court may in a given case consider the case for a writ of mandamus and;
5. It would, however, be open to party to show that what was referred by the Government was not an industrial dispute within the meaning of the Act."

8. Appropriate Government has no power, either express or implied, to cancel or withdraw a reference after it has made order of reference. Order cancelling or withdrawing or superseding the reference would therefore be incompetent and invalid and would be liable to be struck down being ultra vires the powers of the appropriate Government under Industrial Disputes Act, 1947, (in short the Act) ruled the Apex Court in D.N. Ganguly [1958 (2) LLJ 634]. However, the appropriate Government under section 10 of the Act, has powers to add to or amplify the matter already referred for adjudication. It has no power to supersede the old reference in such a way as to effect withdrawal of the reference validly made. Any amendment, addition or modification which the Government can make subsequent to the order of reference cannot go to the length of superseding or withdrawing the original reference. Though Government has power to rectify or correct previous order of reference, under the guise of amending or correcting the previous order of reference, order of amendment or corrigendum tantamounting to suppression of the previous order of reference, cannot be allowed to be made because such order would be ultravires the powers of the Government.

9. The appropriate Government can amend the reference by way of addition or modification so long as amendment does not have the effect of withdrawing or superseding the reference already made. Cardinal principle in determination of the question as to whether amendment amounts to correction of clerical error or entertaining of fresh material, is whether the relief claimed by the aggrieved party in the original notification can be granted in the proceedings which are to take place in pursuance of the amended notification. Though the Government has inherent powers to correct apparent errors in its reference order, yet that does not mean that the Government has power to review or articulate its earlier order of reference. Reference can be made to the precedent in Modern Foundry and Machine Systems Ltd. (1999 LLJ 1137).

10. In the light of legal principles, referred above, it would be taken note of as to whether the present reference order amounts to withdrawal of the reference order relating to the dispute concerning the present claim. As pointed out above, reference order, which has been registered as I.D. No. 23/2013, requires this Tribunal to adjudicate as to whether action of the management of ICS Systems Pvt. Ltd. New Delhi, in dismissing the claimant (whose name is

there at serial No. 6 of the list of 36 workmen sent along with the reference order) from service with effect from 10.05.2012 without holding any disciplinary proceedings and further in violation of Section 33(1)(b) of the Act is legal and justified. Thus, it is evident that in the earlier reference order, this Tribunal is supposed to adjudicate as to whether dismissal of the claimant by the Contractor without holding an enquiry and in violation of provisions of section 33(1)(b) of the Act is legal and justified. Question, so raised, encompasses the legality and justifiability of the dismissal order, along with question as to whether such action is violative of the provisions of section 33(1)(b) of the Act.

11. In the reference order, under consideration, same question has been projected by the appropriate Government. Thus, it emerges that as far as present claim is concerned, the appropriate Government attempts to withdraw the earlier reference order and to substitute it with the present reference order. It is not an act of amending any clerical omission or adding some other question, which was not earlier referred for adjudication. During pendency of the dispute, the appropriate Government has no power to withdraw it from adjudication and to issue fresh reference order on the very terms which were under consideration with the Tribunal. Thus, it is evident that the subsequent reference is ultravires of the powers of the appropriate Government.

12. In view of the above discussion, it is concluded that appropriate Government was not competent to make this reference order during pendency of the industrial dispute registered as I.D. No. 23/2013. The reference order is, therefore, discarded, since it cannot grant jurisdiction to this Tribunal to adjudicate it. The Tribunal is seized of I.D. No. 23/2013, which would be adjudicated in due course. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated : December 12, 2013

Dr. R.K. YADAV, Presiding Officer

नई दिल्ली, 23 जनवरी, 2014

**का.आ. 483.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दिल्ली इंटरनेशनल एअरपोर्ट लिमिटेड, नई दिल्ली के प्रबंधन के संबंध में निोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. 1, दिल्ली के पंचाट (संदर्भ संख्या 141/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-01-2014 को प्राप्त हुआ था।

[सं. एल-11012/7/2013-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 23rd January, 2014

**S.O. 483.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central

Government hereby publishes the award (Ref. No.141/2013) of the Central Government Industrial Tribunal/Labour Court No.1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Delhi International Airport Ltd., New Delhi and their workman, which was received by the Central Government on 20-1-2014.

[No.-L-11012/7/2013-IR (M)]

JOHAN TOPNO, Under Secy.

#### ANNEXURE

**BEFORE DR. R. K. YADAV, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL  
NO. I, KARKARDOOMA COURTS COMPLEX, DELHI**

**I.D. No.141/2013**

Shri James Massey,  
C-12/89, Yamuna Vihar,  
New Delhi-110053

...Workman

Versus

1. M/s. Delhi International Airport Ltd.,  
New Udan Bhawan, Terminal-III,  
IGI Airport, New Delhi - 110037
2. M/s. ICS System Pvt. Ltd.,  
B-371, Third Floor, Meera Bagh,  
New Delhi-110063

...Management

#### AWARD

In the year 2008, Airport Authority of India entered into an agreement for operation, management and development of Indira Gandhi International Airport, New Delhi with M/s. Delhi International Airport Ltd. (in short the management). On the strength of the agreement, referred above, job of operation of passenger boarding bridges( in short PBB) at Indira Gandhi International Airport and domestic airport came within the purview of the management. The management engaged M/s ICS System Ltd. (in short the contractor) for operation and maintenance of PBB at IGI Airport as well as domestic airport at New Delhi. The contractor employed 230 workers consisting of clerks, executives and workmen of various categories. Persons employed by the contractor formed their union with the name of IGIA Aerobridge Workers Union (in short the union). When the contractor came to know about formation of the said union, it withheld photo identity cards of Shri James Massey and Shri Praveen Sharma, President and Vice President respectively of the union, with a view to coerce and restrain the workers not to organize for the purpose of collective bargaining. A complaint was made to the Conciliation Officer on 02.12.2011 against the said unfair labour practice, who entered into conciliation proceedings.

2. On 12.02.2012, an official of the management misbehaved with the Vice President and two other active workers of the union. It resulted into an altercation. The

management initiated action and did not allow the workers to enter the premises of the Airport. The union served strike notice on 14.03.2012. Again conciliation proceedings were initiated, which failed on 30.03.2012. Workers participated in the strike on 12.04.2012 and as such the contractor dismissed 36 workmen from service. The union raised an industrial dispute in that regard. On failure of conciliation proceedings, the appropriate Government referred the dispute to this Tribunal for adjudication, vide order No. L-11011/7/2012-IR(M), New Delhi dated 30.01.2013, with following terms :

"Whether the action of the management of M/s ICS Systems Pvt. Ltd., New Delhi in dismissing 36 workmen (list enclosed) from service with effect from 10.05.2012 without holding any disciplinary proceedings and further in violation of section 33(1)(b) of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief the said workmen are entitled to?"

3. Industrial dispute, referred above, has been registered as ID No. 23/2013 and claimant union filed its claim statement on 13.03.2013. The management as well as the contractor filed their written statement, which were followed by rejoinder. Thereafter, the matter is listed for 03.10.2013 for evidence of the parties.

4. During pendency of the aforesaid dispute for adjudication, the appropriate Government referred the present dispute, vide order No. L-11 012/7/2013-IR(M), New Delhi dated 09.10.2013 with following terms:

"Whether the action of the management of M/s ICS System Pvt. Ltd. in terminating the service of Shri James Massey S/o Shri Umar Massey, ex-Operator with effect from 10.05.2012 or transferring him to Mumbai is just, fair and legal? If not, what relief will be given to the workman and from which date?"

5. It would not be out of place to mention that the name of Shri James Massey finds place at serial No. 1 of the list annexed by the appropriate Government alongwith industrial dispute, registered as ID No. 23/2013. Thus, it emerges that during pendency of ID No. 23/2013, present dispute has been referred for adjudication on the same proposition, which would be adjudicated in ID No. 23/2013.

6. I have heard Shri Raju Gupta, authorised representative of M/s ICS Systems Pvt. Ltd., besides perusal of record of the aforesaid Industrial Dispute. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:-

7. Powers of the appropriate Government, to make reference of an industrial dispute, were considered by the Apex Court in Secretary, India Tea Association [2000 (2) LLN 25] and summarized as follows:



- “1. The appropriate Government would not be justified in making a reference under Section 10 of the Act without satisfying itself on the facts and circumstances brought, to its notice that an industrial dispute exists or apprehended and if such a reference is made it is desirable wherever possible, for the government to indicate the nature of dispute in the order or reference;
2. The order of the appropriate Government making a reference under Section 10 of the Act is an administrative order and not a judicial or quash-judicial one and the Court, therefore, cannot canvass the order of the reference closely to see if there was any material before the Government to support its conclusion, as if it was a judicial or quail-judicial order;
3. An order made by the appropriate government under Section 10 of the Act being an administrative order no list is involved, as such an order is made on the subjective satisfaction of the Government;
4. If it appears from the reasons given that the appropriate Government took into account any consideration irrelevant or foreign material, the Court may in a given case consider the case for a writ of mandamus and;
5. It would, however, be open to party to show that what was referred by the Government was not an industrial dispute within the meaning of the Act.”

8. Appropriate Government has no power, either express or implied, to cancel or withdraw a reference after it has made order of reference. Order cancelling or withdrawing or superseding the reference would therefore be incompetent and invalid and would be liable to be struck down being ultra vires the powers of the appropriate Government under Industrial Disputes Act, 1947, (in short the Act) ruled the Apex Court in D.N. Ganguly [1958 (2) LLJ 634]. However, the appropriate Government under Section 10 of the Act, has powers to add to or amplify the matter already referred for adjudication. It has no power to supersede the old reference in such a way as to effect withdrawal of the reference validly made. Any amendment, addition or modification which the Government can make subsequent to the order of reference cannot go to the length of superseding or withdrawing the original reference. Though Government has power to rectify or correct previous order of reference, under the guise of amending or correcting the previous order of reference, order of amendment or corrigendum tantamounting to suppression of the previous order of reference, cannot be allowed to be made because such order would be ultra vires the powers of the Government.

9. The appropriate Government can amend the reference by way of addition or modification so long as amendment does not have the effect of withdrawing or superseding the reference already made. Cardinal principle in determination of the question as to whether amendment amounts to correction of clerical error or entertaining of fresh material, is whether the relief claimed by the aggrieved party in the original notification can be granted in the proceedings which are to take place in pursuance of the amended notification. Though the Government has inherent powers to correct apparent errors in its reference order, yet that does not mean that the Government has power to review or articulate its earlier order of reference. Reference can be made to the precedent in Modern Foundry and Machine Systems Ltd. (1999 LLJ 1137).

10. In the light of legal principles, referred above, it would be taken note of as to whether the present reference order amounts to withdrawal of the reference order relating to the dispute concerning the present claim. As pointed out above, reference order, which has been registered as I.D. No. 23/2013, requires this Tribunal to adjudicate as to whether action of the management of ICS Systems Pvt. Ltd., New Delhi, in dismissing the claimant (whose name is there at serial No. 1 of the list of 36 workmen sent alongwith the reference order) from service with effect from 10.05.2012 without holding any disciplinary proceedings and further in violation of Section 33(1)(b) of the Act is legal and justified. Thus, it is evident that in the earlier reference order, this Tribunal is supposed to adjudicate as to whether dismissal of the claimant by the Contractor without holding an enquiry and in violation of provisions of Section 33(1)(b) of the Act is legal and justified. Question, so raised, encompasses the legality and justifiability of the dismissal order, alongwith question as to whether such action is violative of the provisions of Section 33(1)(b) of the Act.

11. In the reference order, under consideration, same question has been projected by the appropriate Government. Thus, it emerges that as far as present claim is concerned, the appropriate Government attempts to withdraw the earlier reference order and to substitute it with the present reference order. It is not an act of amending any clerical omission or adding some other question, which was not earlier referred for adjudication. During pendency of the dispute, the appropriate Government has no power to withdraw it from adjudication and to issue fresh reference order on the very terms which were under consideration with the Tribunal. Thus, it is evident that the subsequent reference is ultra vires of the powers of the appropriate Government.

12. In view of the above discussion, it is concluded that appropriate Government was not competent to make this reference order during pendency of the industrial dispute registered as I.D. No. 23/2013. The reference order is, therefore, discarded, since it cannot grant jurisdiction

to this Tribunal to adjudicate it. The Tribunal is seized of I.D. No. 23/2013, which would be adjudicated in due course. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated : December 12, 2013

Dr. R.K. YADAV, Presiding Officer

नई दिल्ली, 23 जनवरी, 2014

**का.आ. 484.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ओरिएण्टल इन्श्युरेन्स कंपनी लिमिटेड, नई दिल्ली के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय 1, दिल्ली के पंचाट (संदर्भ संख्या 30/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-01-2014 को प्राप्त हुआ था।

[ सं. एल-17012/1/2011-आई आर (एम) ]

जोहन तोपनो, अवर सचिव

New Delhi, the 23rd January, 2014

**S.O. 484.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 30/2012) of the Central Government Industrial Tribunal/Labour Court No.1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Oriental Insurance Co. Ltd., New Delhi and their workman, which was received by the Central Government on 20/1/2014.

[No. L-17012/1/2011-IR (M)]

JOHAN TOPNO, Under Secy.

#### ANNEXURE

**BEFORE DR. R.K. YADAV, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL  
NO.1, KARKARDOOMA COURTS COMPLEX,  
DELHI**

**I.D. No. 30/2012**

Shri Ajay Kumar Meena  
S/o Sh. Raj Kumar Meena  
R/o L-1/221B, DDA Flats,  
Kalkaji, New Delhi-19.

...Workman

#### Versus

The Senior Divisional Manager,  
Oriental Insurance Co. Ltd.,  
IXth Floor, Jeevan Bharti Building,  
Cannaught Place,  
New Delhi-01.

...Management

#### AWARD

Two vacancies in the cadre of Assistant (Typist), reserved for S.T. Category, were notified by the Oriental

Insurance Company Ltd. (in short the Insurance Co.) to clear backlog as on 31.03.1995. A requisition along with a notification in that regard was sent by Insurance Co. to the employment officer and S.C./S.T. Association, Punchguyan Road, New Delhi, requesting them to sponsor names of eligible candidates for the posts. The General Secretary of Delhi S.C. Welfare Association had sent a list of fifty eight eligible candidates, which included name of the claimant. Call letters dated 21.8.1995 were issued by the Insurance Co. to eligible candidates to take written test for the aforesaid post. The claimant appeared for written test and filled up and submitted an application form, claiming himself to be a member of S.T. category. When he qualified the written test, he was called for type test. Lastly he was called for interview and an appointment letter dated 4.1.1996 was issued by the Insurance Co. in his favour.

2. One Chandeshwar Prasad filed writ petition CWP No. 5976/2003 before High Court of Delhi, seeking directions to CBI to examine cases of persons who had secured employment against S.T. category in the period from 1996 to 2000. The High Court issued direction 12.1.2005 and in pursuance of the said order verification was conducted by the CBI in respect of case of the claimant. It came to light that the claimant, in criminal conspiracy with other unknown person, has secured his employment on the basis of a forged/fake S.T. certificate dated 24.7.89, purported to have been issued from the office of the Tehsildar, Jaipur, Rajasthan. It also came to light that the claimant was born in Delhi and never lived outside Delhi. He was not a member of Meena community, a tribe covered under S.T. in the State of Rajasthan.

3. The Insurance Co. served charge sheet dated 13.6.2006 on the claimant. An enquiry was conducted. The Enquiry Officer submitted his report to the Disciplinary Authority. In consideration of report of the Enquiry Officer, the Disciplinary Authority awarded penalty of dismissal from service to the claimant, vide his order dated 12.6.2008. Appeal preferred also came to be dismissed on 12.11.2008. The claimant raised a dispute before the Conciliation Officer. Since his claim was contested by the Insurance Co., conciliation proceedings ended into a failure. On consideration of failure report, submitted by Conciliation Officer, the appropriate Govt. referred the dispute to this Tribunal for adjudication, vide order No. L-17012/1/2011-IR(M) New Delhi dated 16.1.12 with following terms:

“Whether the action of the management of Oriental Insurance Company Limited, New Delhi, in terminating the services of Shri Ajay Kumar Meena, Ex-Assistant Typist w.e.f. 12.6.2008, is legal and justified? What relief the workman is entitled to?”

4. Claim statement was filed by the claimant pleading that he applied for the post of Assistant (Typist) vide his application dated 2.9.95 against vacancies reserved for S.T. candidates. He belongs to Meena community by birth,

which community is covered under S.T. category. His forefathers also belong to Meena community. He was appointed on the aforesaid post by the Insurance Co. A caste certificate was issued in his favour by Tehsildar, Jaipur, Rajasthan. Inadvertently facts relating to issuance of that certificate were not entered into the records of Tehsildar Jaipur, by the officials working in the said office. He cannot be held accountable for their lapses.

5. The claimant pleads that in his school record his caste is written as Meena. Rashtriya Soshit Parishad, Connaught Place, New Delhi, also issued a certificate in that regard which projects that he is Meena by community. Adarsh Adibasi Meena Samaj, Shastri Nagar, Delhi, had also issued a caste certificate projecting his caste as Meena. On 30.8.2008 Tehsildar, Gangapur City, Rajasthan, had also issued a social status certificate projecting his caste as Meena. All these documents bring it over the record that he belongs to Meena community, which is covered under S.T. in the State of Rajasthan.

6. He claims that since he belongs to Meena community, charge sheet served upon him was not proper and legal. The enquiry was not conducted in consonance with the principles of natural justice. He was not given an opportunity to defend himself. The report of the Enquiry Officer is perverse. Punishment of dismissal, awarded to him, is not maintainable at all. Order of the Appellate Authority is also not justified. He had been victimized. He claims that order of the Disciplinary Authority, passed on 12.6.2008, and the Appellate Authority, passed on 12.11.2008, may be set aside and he may be reinstated in service with continuity and full back wages.

7. Claim was demurred by the Insurance Co. pleading that the claimant had secured appointment to a post of Assistant (Typist) on the basis of a forged social status certificate. He used a certificate purported to have been issued on 24.7.1989 by Tehsildar, Jaipur, Rajasthan, wherein his caste has been shown as Meena. He had been shown as resident of 108, Sodala, Ajmer Road, Jaipur, in the said certificate. On the other hand caste certificate dated 30.8.2008, issued by Tehsildar, Ganganagar City, District Savai Madhopur, Rajasthan, projects him to be resident of Ganganagar City, District Savai Madhopur, Rajasthan. These addresses bring it over the record that he had obtained these certificates in malafide manner. For the offence committed by the claimant, CBI had registered a case. During the course of investigation CBI had seized the original documents pertaining to this case.

8. Charge sheet dated 13.6.08, served on the claimant, is legal and proper. The enquiry conducted was in consonance with the principles of natural justice. Caste certificate dated 24.07.1989, on the basis of which he obtained job with the Insurance Co., was found to be fake. The Enquiry Officer submitted his report to the Disciplinary Authority. Punishment of dismissal from service was

awarded to him, which commensurate to his misconduct. His appeal also came to be dismissed. Caste certificate dated 30.08.2008 was not produced by the claimant before the Insurance Co. till the date of his dismissal. The action of the Insurance Co. is legal and justified. Claim preferred merits dismissal, pleads the Insurance Co.

9. On perusal of pleadings following issues were settled:

- (i) Whether the enquiry conducted by the management is just, fair and proper?
- (ii) Whether punishment of dismissal awarded to the claimant commensurate to his misconduct?
- (iii) As in terms of reference.

10. Issue No.1 was treated as preliminary issue.

11. Claimant examined himself to discharge onus resting on him. The Insurance Co. opted not to examine any witness to discharge its onus of on the preliminary issue.

12. On hearing the parties, preliminary issue was answered in favour of the claimant and against the Insurance Co., vide order dated 3.9.2012.

13. To prove misconduct of the claimant, the Insurance Co. examined Shri Satyanarayan Meena and Shri N.K.Sahani. In rebuttal to the above evidence the claimant again entered the witness box. No other witness was examined by either of the parties.

14. Arguments were heard at bar. Shri H. K. Chaturvedi, authorized representative, advanced arguments on behalf of the claimant. Shri Rahul Ranjan Verma, authorized representative, raised submissions on behalf of the Insurance Co. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:

#### **Issue No. 2**

15. In order to assess quantum of punishment awarded to the claimant, it is expedient to ascertain as to whether the Insurance Co. has been able to prove misconduct of the claimant. For an answer to the proposition facts unfolded by Shri Satyanarayan Meena, Shri N.K.Sahani and the claimant are to be scanned. Shri Satyanarayan Meena unfolds that on 20.9.2005 Regional Office Jaipur, Oriental Insurance Co. Ltd., directed him to conduct an enquiry in respect of social status certificate, submitted by the claimant to obtain appointment on the post of Assistant. He proves copy of that communication as Ex. MW1/1. He declares that he wrote letter to Tehsildar, Jaipur, on 28.9.2005, copy of which letter is Ex. MW1/2. He had annexed photocopy of social status certificate dated



24.7.89 along with the said letter, which is Ex. MW1/3. He personally visited Tehsildar, Jaipur, and on examination of records Tehsildar gave a report which is Ex. MW1/4. He prepared his report on the basis of above documents, which is Ex. MW1/5.

16. Shri N.K.Sahani tendered certified copy of the charge sheet submitted by the CBI against the claimant, besides list of witnesses and documents and proved the same as Ex. MW2/1 to Ex. MW2/3. Copy of charge sheet Ex. MW2/1 highlights that on investigation CBI found social status certificate dated 24.7.89 to be forged. CBI also noted that residential address as of 108, Sodala, Ajmer Road, Jaipur, which has been mentioned in social status certificate dated 24.7.89, was non-existent. CBI also reached a conclusion that father of the claimant was never a resident of Village Nandoti, Near Gangapur City, District Savai Madhopur, Rajasthan. His father never resided at Adarsh Nagar, near FCI Godown, Ward No.33, Gangapur City, Rajasthan. Social status certificate was issued by Tehsildar Gangapur City on the report of area patwari and Nagar Palika Ward Councilor, Gangapur City, which report was submitted without physical verification of facts. The claimant and his father do not belong to Meena community.

17. In his affidavit Ex. WW1/B claimant reiterates those very facts, which were pleaded by him in his claim statement. He asserts that he is Meena by caste. According to him various documents testify his claim in that regard. However during course of his cross examination he admits that he moved an application for job with the Insurance Co. reserved for S.T. candidates, which application was supported by certificate Ex. MW1/3. He projects that certificate Ex. MW1/4 was annexed by him with his appeal. However he concedes that it was not annexed by him alongwith the application moved for the job. He concedes that a criminal case pends trial against him before Special Judge CBI.

18. When facts unfolded by Shri Satyanaryan Meena are appreciated it emerge over the record that Shri Meena approached Tehsildar, Jaipur, to verify as to whether certificate Ex. MW1/3 was issued by his office. It was reported that the said certificate was not issued by the office of Tehsildar, Jaipur, Rajasthan. Communication Ex. MW1/4 was issued by the office of Tehsildar, Jaipur, Rajasthan declaring therein that Ex. MW1/3 was not issued by that office. Shri Satanaryan Meena makes it clear that he met Tehsildar, Jaipur, 2-3 times in connection with verification of facts. Therefore out of facts projected by Shri Meena it came to light that social status certificate, purported to have been issued on 24.7.89, was fake. In his testimony dated 3.9.12 the claimant concedes that as per Tehsildar, Jaipur, Rajasthan, social status certificate submitted by him to the Insurance Co. was fake.

19. There is no denial from the side of the claimant that CBI submitted a charge sheet against him before the

CMM, Tis Hazari Courts, Delhi, copy of which charge sheet is Ex. MW2/1. When contents of this charge sheet are perused it came to light that on investigation CBI concluded that social status certificate dated 24.7.89, purported to have been issued by Tehsildar, Jaipur, Rajasthan, was fake. Admittedly Ex. MW1/3 was submitted by the claimant in support of his application for the post of Assistant (Typist) reserved for S.T. category, notified by the Insurance Co. The facts detailed above bring it to the light that the claimant claimed his eligibility for appointment to the post of Assistant (Typist) reserved for S.T. community, on the strength of social status certificate dated 24.7.89. At the post of repetition it is said that the said certificate was fake. Resultantly it is clear that the claimant secured appointment to the post on the basis of a fake certificate.

20. A hue and cry has been made by the claimant to the effect that factum of issuance of certificate Ex. MW1/3 was not recorded by office of Tehsildar, Jaipur, in its record, due to inadvertence. He claims that he belongs to Meena community and certificates Ex. MW1/10 to Ex. MW1/12, besides Ex. MW1/4 establish that fact. In order to ascertain veracity of his claim record has been scanned. Application dated 13.11.95 was moved by the claimant to secure job with the Insurance Co., copy of which application highlights that the claimant details his postal address as F-57-A, Khanpur Colony, New Delhi. It was his permanent address also. He declares his place of birth as of Delhi, in the said application. Therefore in his application dated 13.11.95 the claimant projected himself to be resident of Delhi, where he was residing since birth. In his application he has not suffixed his caste either after his name or name of his father. In coloum No.A-9 of the said application he puts a tick mark on S.T. community. To highlight state of domicile he writes Rajasthan. Against home town he also writes Rajasthan. Therefore in his application claimant projects to be resident of Delhi and without disclosing name of his home town he claims to be domicile of state of Rajasthan.

21. Certificate Ex. MW1/3 projects his address as of 108, Sodala, Ajmer Road, Jaipur. This address doesn't find place in his application dated 13.11.95. On the other hand CBI found this address to be non existant, which fact emerges out of charge sheet Ex. MW2/1. These facts gives an inference that with a view to support his claim of being a member of S.T. community he projected Rajasthan as his state of domicile in his application dated 13.11.95. To support that claim fake certificate Ex. MW1/3 was annexed.

22. The claimant presents that certificate Ex. MW1/4 supports his case to the effect that he belongs to Meena community. This certificate purports to have been issued on 30.8.08. It highlights that one Shri Ajay Kumar Meena resident of Gangapur City, District Savai Madhopur, Rajasthan, belongs to Meena community, which is covered under S.T. of Rajasthan state. In Ex. MW1/4 house number, where Shri Ajay Kumar was residing, has not been



mentioned. As charge sheet Ex. MW2/1 highlights this certificate was obtained on the basis of report of area patwari and Nagar Palika Ward Councilor, Gangapur City, which report was submitted without physical verification of facts by them. Thus this document was also obtained by deceitful means. Certificates Ex. MW1/10 to Ex. MW1/12 nowhere project the facts, on the strength of which it were issued. Further more as per his own admission, in application dated 23.11.95, the claimant was born and brought up in Delhi, besides the fact that he got his education herein Delhi all though out. The said application nowhere discloses that the claimant ever intends to settle in Rajasthan. Thus no material is available on record to show that the claimant was domicile of Rajasthan. In such a situation certificates Ex. MW1/4, Ex. MW1/10 to Ex. MW1/12 nowhere probablize facts to the effect that the claimant was domicile of state of Rajasthan.

23. Meena community is not in S.T. category declared as such by Government of NCT Delhi. A domicile of Delhi, though he may belong to Meena community, is not S.T., covered under that category as notified by state of Rajasthan. There is other facet of the coin. Charge sheet Ex. MW2/1 deciares that Rajkumar, father of the claimant, never resided in village Nandoti, near Gangapur City, District Savai Madhopur, Rajasthan. He also never resided at Adarsh Nagar, near FCI Godown, Ward No.33, Gangapur, Rajasthan, highlights the charge sheet. In school record of his children, the claimant had not mentioned that his wards belong to SC/ST category. Admission forms of his children were filled in by the claimant himself. His wife belongs to chawla caste. Thus it is crystal clear that the claimant does not belong to Meena community and above certificates were procured by him with a view to support his claim.

24. The claimant entered into service of Insurance Co. on the basis of a fake caste certificate. He obtained appointment to the post of Assistant reserved for ST candidates and thus deprived a genuine candidate, falling in the said category. The claimant obtained benefits of reservation and played fraud not only on the Insurance Co., the society but on the constitution of India too. His act constituted a misconduct in terms of Rule 4(4) of the General Insurance (Conduct, Discipline and Appeals) Rules, 1975. The Insurance Co. has been able to establish that the claimant committed a serious misconduct when he obtained job of Assistant (Typist) on the basis of a fake certificate.

25. Punishment of dismissal from service was awarded to the claimant vide order dated 12.6.2008. Whether this punishment commensurate to his misconduct? Shri Chaturvedi presents that the punishment awarded to the claimant is shockingly disproportionate to his misconduct. Contra to this, Shri Verma argued that misconduct committed by the claimant is serious and punishment commensurate to his misconduct. Therefore out of the facts submitted by the rival parties it would be ascertained as to

what should be the appropriate punishment, which could be awarded to the claimant.

26. Right of an employer to inflict punishment of discharge or dismissal is not unfattered. The punishment imposed must commensurate with gravity of the misconduct, proved against the delinquent workman. Prior to enactment of section 11-A of the Act, it was not open to the industrial adjudicator to vary the order of punishment on finding that the order of dismissal was too severe and not commensurate with the act of misconduct. In other words, the industrial adjudicator could not interfere with the punishment as it was not required to consider propriety or adequacy of punishment or whether it was excessive or too severe. Apex Court, in this connection, had, however, laid down in *Bengal Bhatdee Coal Company* [1963 (I) LLJ 291] that where order of punishment was shockingly disproportionate with the act of the misconduct which no reasonable employer would impose in like circumstances, that itself would lead to the inference of victimization or unfair labour practice which would vitiate order of dismissal or discharge. But by enacting the provisions of section 11-A of the Act, the Legislature has transferred the discretion of the employer, in imposing punishment, to the industrial adjudicator. It is now the satisfaction of the industrial adjudicator to finally decide the quantum of punishment for proved acts of misconduct, in cases of discharge or dismissal. If the Tribunal is satisfied that the order of discharge or dismissal is not justified in any circumstances on the facts of a case, it has the power not only to set aside order of punishment and direct reinstatement with back wages, but it has also the power to impose certain conditions as it may deem fit and also to give relief to the workman, including award of lesser punishment in lieu of discharge or dismissal.

27. It is established law that imposing punishment for a proved act of misconduct is a matter for the punishing authority to decide and normally it should not be interfered with by the Industrial Tribunals. The Tribunal is not required to consider the propriety or adequacy of punishment. But where the punishment is shockingly disproportionate, regard being had to the particular conduct and past record, or is such as no reasonable employer would ever impose in like circumstance, the Tribunal may treat the imposition of such punishment as itself showing victimization or unfair labour practice. Law to this effect was laid by the Apex Court in *Hind Construction and Engineering Company Ltd.* [1965 (I) LLJ 462]. Likewise, in *Management of the Federation of Indian Chambers of Commerce and Industry* [1971 (11) LLJ 630] the Apex Court ruled that the employer made a mountain out of a mole hill and had blown a trivial matter into one involving loss of prestige and reputation and as such punishment of dismissal was held to be unwarranted. In *Ram Kishan* [1996 (I) LLJ 982] the delinquent employee was dismissed from service for using abusive language against a superior officer. On the facts

and in the circumstances of the case, the Apex Court held that the punishment of dismissal was harsh and disproportionate to the gravity of the charge imputed to the delinquent. It was ruled therein, "when abusive language is used by anybody against a superior, it must be understood in the environment in which that person is situated and the circumstances surrounding the event that led to the use of abusive language. No straight-jacket formula could be evolved in adjudicating whether the abusive language in the given circumstances would warrant dismissal from service. Each case has to be considered on its own facts".

28. In *B.M. Patil* [1996 (11) LLJ 536], Justice Mohan Kumar of Karnataka High Court observed that in exercise of discretion, the Disciplinary Authority should not act like a robot and justice should be moulded with humanism and understanding. It has to assess each case on its own merit and each set of fact should be decided with reference to the evidence regarding the allegation, which should be basis of the decision. The past conduct of the worker may be a ground for assuming that he might have a propensity to commit the misconduct and to assess the quantum of punishment to be imposed. In that case a conductor of the bus was dismissed from service for causing revenue loss of 50p to the employer by irregular sale of tickets. It was held that the punishment was too harsh and disproportionate to the act of misconduct.

29. After insertion of section 11-A of the Act, the jurisdiction to interfere with the punishment is there with the Tribunal, who has to see whether punishment imposed by the employer commensurate with the gravity of the act of misconduct. If it comes to the conclusion that the misconduct is proved, it may still hold that the punishment is not justified because misconduct alleged and proved is such as it does not warrant punishment of discharge or dismissal and where necessary, set aside the order of discharge or dismissal and direct reinstatement with or without any terms or conditions as it thinks fit or give any other relief, including the award of lesser punishment, in lieu of discharge or dismissal, as the circumstance of the case may warrant. Reference can be made to a precedent in *Sanatak Singh* [1984 Lab.I.C.817]. The discretion to award punishment lesser than the punishment of discharge or dismissal has to be judiciously exercised and the Tribunal can interfere only when it is satisfied that the punishment imposed by the management is highly disproportionate to the decree of the guilt of the workman. Reference can be made to the precedent in *Kachraji Motiji Parmar* [1994 (11) LLJ 332]. Thus it is evident that the Tribunal has now jurisdiction and power of substituting its own measure of punishment in place of the managerial wisdom, once it is satisfied that the order of discharge or dismissal is not justified. On facts and in the circumstances of a case, section 11-A of the Act specifically gives two folds powers to the Industrial Tribunal, first is virtually the power of appeal

against findings of fact made by the Enquiry Officer in his report with regard to the adequacy of the evidence and the conclusion on facts and secondly of foremost importance, is the power of reappraisal of quantum of punishment.

30. In *Bharat Heavy Electricals Ltd.* [2005 (2) S.C.C. 481] the Apex Court was confronted with the proposition as to whether power available to the Industrial Tribunal under section 11-A of the Act are unlimited. The Court opined that "there is no such thing as unlimited jurisdiction vested with any judicial or quasi judicial forum and unfettered discretion is sworn enemy of the constitutional guarantee against discrimination. An unlimited jurisdiction leads to unreasonableness. No authority, be it administrative or judicial, has any power to exercise the discretion vested in it unless the same is based on justifiable grounds supported by acceptable materials and reasons thereof". The Apex Court relied its judgment in *C.M.C. Hospital Employees Union* [1987 (4) S.C.C. 691] wherein it was held that "section 11-A cannot be considered as conferring an arbitrary power on the Industrial Tribunal or the Labour Court. The power under section 11-A of the Act has to be exercised judiciously and the Industrial Tribunal or Labour Court is expected to interfere with the decision of a management under section 11-A of the Act only when it is satisfied that the punishment imposed by the management is highly disproportionate to the degree of guilt of the workmen concerned. The Industrial Tribunal or Labour Court has to give reasons for its decision". In *Hombe Gowda Educational Trust* [2006 (1) S.C.C. 430] the Apex Court announced that the Tribunal would not normally interfere with the quantum of punishment imposed by the employer unless an appropriate case is made out therefore.

31. Power to set aside order of discharge or dismissal and grant relief of reinstatement or lesser punishment is not untrammelled power. This power has to be exercised only when Tribunal is satisfied that the order of discharge or dismissal was not justified. This satisfaction of the Tribunal is objective satisfaction and not subjective one. It involves application of the mind by the Tribunal to various circumstances like nature of delinquency committed by the workman, his past conduct, impact of delinquency on employer's business, besides length of service rendered by him. Furthermore, the Tribunal has to consider whether the decision taken by the employer is just or not. Only after taking into consideration these aspects, the Tribunal can upset the punishment imposed by the employer. The quantum of punishment cannot be interfered with without recording specific findings on points referred above. No indulgence is to be granted to a person, who is guilty of grave misconduct like cheating, fraud, misappropriation of employer's fund, theft of public property etc. A reference can be made to the precedent in *Bhagirath Mal Rainwa* [1995 (I) LLJ 960].

32. As noted above the claimant used a fake social states certificate and obtained appointment to a post reserved for ST candidate. He did not belong to ST community. His appointment to the post was no appointment in the eyes of law. He usurped the post which should have gone to a member of ST community. His appointment to the post was vitiated by fraud and illegality. Such an appointment is void and nonest in the eyes of law. A person who enters service by producing a fake caste certificate and obtains appointment to the post reserved for ST candidate does not deserve any sympathy or indulgence of this Tribunal. Fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetrated or saved by application of any equitable doctrine. Such proposition of law was laid by the Apex Court in Madhulika Guruprashad Daikin [2008 (13) SCC 170] and R. Vishwanatha Pillai [2004 (2) SCC 105]. Relying above legal propositions, I say that the claimant had played fraud on the Insurance Co., the society and the constitution. He did not have any right to the post. In such a situation punishment of dismissal from service cannot be said be harsh by any stretch of imagination. Punishment awarded to him commensurate to his misconduct. Issue is, therefore, answered in favour of the Insurance Co. and against the claimant.

### Issue No. 3

33. The claimant obtained appointment to the post of Assistant (Typist) with the Insurance Co. by fraudulent means, by producing a fake caste certificate. He entered into service by deceitful means. Parameters for grant of indulgence for such an employee are different than an employee whose services are found to have been illegally terminated. The claimant is not entitled to any relief, much less the relief of reinstatement in service with continuity. His claim cannot be entertained at all. Hence the same is dismissed. An award is, accordingly, passed in favour of the Insurance Co. and against the claimant. It be sent to the appropriate Govt. for publication.

Dated : 02-12-2013

Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 23 जनवरी, 2014

**का.आ. 485.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ओएनजीसी लिमिटेड के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 146/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-01-2014 को प्राप्त हुआ था।

[सं. एल-30012/18/2002-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 23rd January, 2014

**S.O. 485.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 146/2002) of the Central Government Industrial Tribunal/Labour Court, Lucknow now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of ONGC Ltd. and their workmen, which was received by the Central Government on 20-01-2014.

[No. L-30012/18/2002-IR (M)]

JOHAN TOPNO, Under Secy.

### ANNEXURE

#### CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

**PRESENT :** Dr. MANJU NIGAM, Presiding Officer

**I.D. No. 146/2002**

Ref. No. L-30012/18/2002-IR (M) dated: 05.08.2002

#### BETWEEN:

Shri Rajesh Kumar S/o Late Srichand  
Village Nathanpur, Post Nehru Gram,  
Dehradun

#### AND

1. The Director (P)  
Tel Bhavan,  
Dehradun – 248 001

2. The Dy. General Manager (Adm),  
ONGC, Tel Bhawan, Dehradun

#### AWARD

1. By order No. L-30012/18/2002-IR (M) dated: 05.08.2002 and its subsequent corrigendum dated 21.01.2002 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Shri Rajesh Kumar S/o Late Srichand, Village Nathanpur, Post Nehru Gram, Dehradun and the Director (P), Tel Bhavan, Dehradun & the Dy. General Manager (Adm), ONGC, Tel Bhawan, Dehradun for adjudication.

2. The reference under adjudication is:

“Whether the action of ONGC Ltd., management in terminating the services of Shri Rajesh kumar Attdt. Gr. III w.e.f. 26.11.2001 is just fair and legal? If not, for what relief he is entitled to?”

3. It is admitted case of the parties that the workman, Rajesh Kumar was working as Attendant Grade – III w.e.f. 22.05.1990 and when he remained absent from 01.08.2000 to 05.02.2000 the disciplinary action was taken against him since he remained absent unauthorizedly on many occasions previously. The workman was charge sheeted



vide memorandum dated 22.02.2001 and after considering his explanation being unsatisfactory the management decided to hold inquiry into the charges leveled against the workman. The Inquiry Officer after conducting the inquiry found the charges to be proved and accordingly submitted his report to the Disciplinary Authority. The workman was supplied with the copy of findings of the Inquiry Officer and was afforded an opportunity to represent. When no reply was received from the workman, the Disciplinary Authority imposed the penalty of removal from service on the workman.

4. It has been alleged by the workman that there was flagrant denial of natural justice to the workman in course of the enquiry, in as much as the same was not impartial and the punishment imposed upon him was disproportionate to the misconduct committed by him; therefore, the domestic enquiry is liable to be vitiated and the action of ONGC in removing the workman from the service be declared unjust, unfair and illegal and the workman be reinstated with full back wages and other consequential benefits.

5. The management of the Bank in its written statement has denied the allegations of the workman and has defended its domestic proceedings with submission that the workman had been afforded all opportunity given under rules the principles of natural justice were fully complied with; hence, there is no anomaly with it. Further, it has also submitted that the workman during inquiry admitted the charges leveled against him before the Inquiry Officer, therefore, it cannot be said that the inquiry was conducted unfairly or the punishment was disproportionate with respect to the misconduct as the charge sheet was issued for habitual absence. Accordingly, the management has prayed that domestic enquiry proceedings conducted by it may be upheld and the action of the ONGC, removing the working from services, be declared just, fair and legal without any benefit to the workman concerned.

6. After completion of the pleadings of the parties, following preliminary issues were framed in the presence of the parties vide order dated 10.02.2009:

- (i) Whether the findings of enquiry officer is perverse?
- (ii) Whether the enquiry proceedings were just & fair?

The parties were called upon to adduce their evidence on preliminary issues. The parties filed documents in support of their respective case and adduced oral evidence. The workman examined himself; whereas the management examined Mrs. Usha Malhotra, Manager (P&A) in support of their case. The parties availed opportunity to cross-examine each other's witnesses. Both the parties forwarded oral arguments on preliminary issues.

7. After hearing the parties' authorized representatives of the parties and going through entire material available on record, following orders were passed on preliminary issues vide order dated 09.10.2007:

“During the course of argument the representative of worker did not press both the issues. On the other hand I find that there is no violation of principle of natural justice in the departmental enquiry nor there perversity in the findings of the enquiry officer. Both the issues are therefore decided against the workman.”

8. The workman was given an opportunity to lead evidence over his pleading which he denied to avail; accordingly the case was fixed for oral argument on the point of quantum of punishment under Section 11 A of the Industrial Disputes Act, 1947.

9. Heard, parties and perused entire material available on record.

10. It has been contended by the authorized representative of the workman that the Labuor Court has ample power under section 11-A of the I.D. Act to substitute a lesser punishment, taking into consideration the facts and circumstances of the case. It was submitted that principle of proportionality calls for interference of this Court into the punishment imposed by the management i.e. of dismissal/removal. It has relied on Joseph Solomon vs. Presiding Officer, Labour Court, U.P., Dehradun & another 2012 (134) FLR 424.

11. Per contra, the management has argued that the Court cannot sit in appeal or it cannot re-appreciate the evidence relied before Inquiry Officer; in as much as it cannot alter the order or punishment. It was submitted that the scope of invoking the powers given under Section 11 A of the Act, by the Labour Court is confined to the condition that the Court should interfere with the order of punishment when it is disproportionate with respect to the misconduct committed or it is so harsh as to shocks the conscience of the Court. It has further been argued that in the instant case the workman was given charge sheet for habitual absence and the workman during the course of departmental inquiry has admitted this fact before the Inquiry Officer, therefore, there is no scope for this Tribunal to interfere with the punishment imposed upon the workman. It has relied on:

1. Devendra Swamy vs. Karnataka State Road Transport Corporation 2002 Supreme Court Cases (L&S) 1093.
2. C.E.S.C. Ltd. Vs. Judge, 3<sup>rd</sup> Industrial Tribunal & others and Bank of India vs Vishwa Mohan (1998) Lab IC 2514.
3. M. Vijaya Ram vs. P.O., Labour Court & others 1989 (58) F.L.R. 313.



The management has further submitted that the workman being habitual absentee, was given various warnings earlier but he did not mend his ways accordingly the domestic inquiry was instituted and was punished for his misconduct on his admission for the same before Inquiry Officer. It has also been submitted that continuation of such an employee may lead to indiscipline in overall administration.

12. I have given my thoughtful consideration to the rival contentions of the authorized representatives of the parties and perused the record and the case laws relied on by the parties.

13. In the instant case the workman was charged with the allegation of habitual unauthorized absence. The inquiry and its findings were upheld by this Tribunal vide order dated 09.10.2007, holding that the disciplinary enquiry was conducted in accordance with the principles of natural justice that the findings of the Enquiry Officer were not perverse'. Hence, after decision of the preliminary issues in the favour of the management, the workman has pleaded that the punishment imposed upon him is disproportionate and this Tribunal should interfere into it within the provisions providing under Section 11 A of the Industrial Disputes Act, 1947.

14. Hon'ble Apex Court in *B.C. Chaurvedi v. Union of India*, (1995) 6 SCC 749 while discussing about the scope of judicial review, in disciplinary matters, has observed as under:

"The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

In *DG, RPF vs. Sai Babu* (2003) 4 SCC 331, Hon'ble Apex Court has observed that:

"6..... Normally, the punishment imposed by a disciplinary authority should not be disturbed by the High Court or a tribunal except in appropriate cases that too only after reaching a conclusion that the punishment imposed is grossly or shockingly disproportionate, after examining all the relevant factors including the nature of charges proved against, the past conduct, penalty imposed earlier, the nature of duties assigned having due regard to their sensitiveness, exactness expected of a discipline

required to be maintained, and the department/establishment which the delinquent person concerned works."

In *United Commercial Bank vs. P.C. Kakkar* (2003) 4 SCC 364 Hon'ble Apex Court on review of a long line of cases and the principles of judicial review of administrative action under English law summarized the legal position in the following words:

"11. The common thread running through in all these decisions is that the court should not interfere with the administrators' decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in *Wednesbury* case the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator. The scope of judicial review is judicial review is limited to the deficiency in decision-making process and not the decision.

12. To put it differently, unless the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court/tribunal, there is no scope for interference. Further, to shorten litigation it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof."

In *Union of India vs. S.S. Ahluwalia* (2007) 7 SCC 257 Hon'ble Supreme Court reiterated the legal position as follows:

"8. .... The scope of judicial review in the matter of imposition of penalty as a result of disciplinary proceedings is very limited. The court can interfere with the punishment only if it finds the same to be shockingly disproportionate to the charges found to be proved."

In *State of Meghalaya v. Mecken Singh N. Marak* (2008) 7 SCC 580 Hon'ble Supreme Court stated that:

"The punishment imposed by the disciplinary authority or the appellate authority unless shocking to the conscience of the court, cannot be subjected to judicial review.

15. Hon'ble Apex Court in *Administrator, Union Territory of Dadra and Nagar Haveli vs. Gulbhia M. Lad* (2010) 2 SCC (L&S) 101 has observed that :

"The legal position is fairly well settled that while exercising the power of judicial review, the High Court or a Tribunal cannot interfere with the discretion exercised by the disciplinary authority, and/or on appeal the appellate authority with regard to the imposition of punishment unless

such discretion suffers from illegality or material procedural irregularity or that would shock the conscience of the court/tribunal. The exercise of discretion in imposition of punishment by the disciplinary authority or appellate authority is dependent on host of factors such as gravity of misconduct, past conduct, the nature of duties assigned to the delinquent, responsibility of the position that the delinquent holds, previous penalty, if any, and the discipline required to be maintained in the department or establishment he works. Ordinarily the court or the tribunal would not substitute its opinion on reappraisal of facts.

16. In the instant case the workman, was charged with the allegations that he was regular habitual absentee from the duty. There is a series of memorandum dated 13.12.94, 03.07.96, 14.08.96, 13.11.96, 28.11.96, 18.02.98, 04.08.98, 18.09.98, 01.12.98, 04.08.99, 18.05.99, 08.10.99, 01.12.99, 23.12.99, 14.08.2000, 04.09.2000, 03.10.2000, 25.10.2000, 20.11.2000, which goes to show that the workman remained absent from duty or station without leave and prior permission or sanction of his controlling officer or Competent Authority, for which he had been warned and explanation had been called from him. During domestic Inquiry the workman admitted the allegations before the Inquiry Officer. There is a specific remark with this respect from the Inquiry Officer in his inquiry report; wherein he has mentioned that "Charge Employee pleaded guilty and admitted both the charges during preliminary hearing". Even after admission of the workman the Inquiry Officer provided him an opportunity to lead evidence in defence and thereafter, forwarded his findings to the Disciplinary Authority as charges to be proved. Hon'ble Andhra Pradesh High Court in *H.K Reddy vs. Central Bank of India, Hyderabad* & another 2002 (93) FLR 245 has observed as under:

"A delinquent employee should not ordinarily be, having regard to the scope and ambit of a domestic enquiry permitted to resile from his earlier stand. An admission by a party to the proceedings is binding on him proprio vigore. He at a subsequent stage should not be permitted to resile, therefrom or explain away the same.

Accordingly, on receipt of the inquiry report, the Disciplinary Authority passed the order of removal from the services. Hon'ble Andhra Pradesh High Court in *M. Vijaya Ram vs. P.O., Labour Court and others* 1989 (58) FLR 313 upheld the order of termination for habitual absence from duty even after several warnings being given for absence but with no result.

Here too there is ample evidence on record to show that the workman had been in a habit to remain absent without any proper application or prior permission of the

Competent Authority, which is highly objectionable, from administration point of view. The management has adduced number of documentary evidence, as detailed hereinabove, to show that the workman had been issued too many warnings regarding his unauthorized absence; and on many occasions the workman assured the management to mend his ways and not repeat such indiscipline in future; but in spite of all those the workman did not change himself and continued to remain absent from duties without proper sanctioned leave from the competent authority. The admission of the workman before Inquiry Officer also indicates that the workman was really guilty of unauthorized absence, which led to his removal after compliance of natural justice in his part. The workman repeated his admission before this Tribunal during his evidence in support of preliminary issues. In his cross-examination he stated that:

"main jaanch karyavaahi main upasthit tha. Yah kahna sani hai ki jaanch main upasthit ho kar maine abhiyog patra ke dwara mere upar lagaae abhiyogon ko maine sweekaar kar liya tha."

17. Hon'ble Apex Court in (2011) 1 Supreme Court Cases (L&S) 721 has observed that:

"7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the inquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore the courts will not interfere with findings of fact recorded in departmental inquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or findings, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations."

18. In the instant case apart from admission of the workman, the charge of habitual unauthorized absence was found to be proved and principles of natural justice were properly observed while conducting the departmental inquiry; and also the findings of the Inquiry Officer were not found to be perverse. Therefore, under the facts and the circumstances and considering the laws, there is no justification in interfering with the punishment imposed upon the workman by the Disciplinary Authority for proved

gross misconduct of 'habitual unauthorized absence'. Accordingly, the workman is not entitled for any relief.

19. Award as above.

Lucknow.

23rd August, 2013.

Dr. MANJU NIGAM, Presiding Officer

नई दिल्ली, 23 जनवरी, 2014

**का.आ. 486.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मोरमुगांव हैंडलिंग एजेंट्स एसोसिएशन गोआ के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, मुम्बई के पंचाट (संदर्भ संख्या 13/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-01-2014 को प्राप्त हुआ था।

[सं. एल-36011/10/99-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 23rd January, 2014

**S.O. 486.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 13/2000) of the Central Government Industrial Tribunal/Labour Court No. 2, Mumbai now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Mormugao Handling Agents Association, Goa and their workman, which was received by the Central Government on 20-01-2014.

[No.L-36011/10/99-IR (M)]

JOHAN TOPNO, Under Secy.

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

**PRESENT :** K.B. KATAKE, B.A. LL.M., Presiding Officer

**REFERENCE No. CGIT-2/13 of 2000**

Employers in relation to the management of Mormugao Handling Agents Association

The President,  
Mormugao Handling Agents Association,  
Pereira Chambers,  
Vasco-da-Gama  
Goa-403 802.

AND

Their Workmen

1. The General Secretary  
Mormugao Waterfront Workers Union  
2<sup>nd</sup> floor, Mukund Building PO Box No.90  
Vasco-da-Gama  
Goa-403 802.

2. The General Secretary  
Gomantak Mazdoor Sangh  
Kamakshi Niwas, Gr. Floor  
Khandapa Band  
Ponda, Goa.

#### APPEARANCES :

For the employer : Mr. D. B. Ambekar, Advocate

For the Union No. 1 : No appearance.

For the Union No. 2 : Mr. P. Gaonkar, Advocate

Camp: Goa, dated the 21<sup>st</sup> August, 2013.

#### AWARD

The Government of India, Ministry of Labour & Employment by its Order No.L-36011/10/99-IR (M), dated 02.02.2000 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication :

“Whether the action of the management of Mormugao Handling Agents Association, Goa in closing their establishment w.e.f. 31/7/1999 without issuing notice and paying retrenchment compensation to the concerned workmen is legal and justified? If not, to what relief the concerned workmen are entitled?”

2. In response to the notice, second party union no.1 filed their statement of claim at Ex-4 & Ex-19. According to them the first party Mormugao Handling Agents Association was the only registered and recognised Agency entitled to employ and deploy the workmen for the handling cargo work within the port. The workmen under reference are affected on account of illegal closure. The first party MHAA being an Industry, before closing its establishment ought to have adhered to the provision of Industrial Disputes Act and on account of non compliance entire closure of the MHAA becomes illegal, void ab-initio and as such the workmen are entitled for the wages till disposal of this reference besides notice pay and compensation as provided under the rules. The union therefore prays that the closure of MHAA without adhering to the provisions of industrial law be held illegal. According to them the MHAA was formed by various Stevedores functioning in the Port of Mormugao in order to serve as a common body for and on their behalf to provide and regulate the employment of various manual labourers for doing the work of shore handling of difference types of cargoes at the Port of Mormugao. On 31/07/1999 the first party MHAA suddenly and arbitrarily declared closure of their establishment. There were 500 workmen on its roll at that time who were the members of the union no. 2 and worked continuously for a period of more than 14 years. As per provisions of Chapter V B of the I. D. Act, prior permission of the appropriate Govt was

required to be taken. No notice was served on the union nor retrenchment compensation was offered to any workman. The union therefore prayed that since MHAA never filed any application under Sec 25 O of the I.D. Act, the closure of the establishment w.e.f. 31/7/1999 be held illegal and further prayed to give all the benefits from 31/07/99 till all the workmen are reinstated in employment at the Port of Mormugao.

3. As per orders passed on Ex-10, Gomantak Mazdoor Sangh is added as party to this reference. They filed their statement of claim at Ex-62. According to them, majority of the workmen under this reference joined the Gomantak Mazdoor Sangh in the month of July 1999. After merger of the Dock Labour Board into the Mormugao Port Trust a separate department namely Cargo Handling Department was formed and all the workers in the Dock Labour Board were absorbed in the said department. It is submitted that Mini Pool was formed by the Mormugao Port Trust and the stevedores operating at the MPT. On the date of dissolution of the society there were more than 450 gang workers on the roll and they were not allowed to resume the duty. They were not paid the notice pay or retrenchment compensation. According to union no.2, any closure or retrenchment without complying with the provisions of Chapter V B of the ID Act is illegal, unjustified and bad in law. Therefore they prayed to declare the closure illegal, unjustified and bad in law. They also prayed to award full wages with continuity of services from the date of closure and to direct MPT to implement the minutes of conciliation proceedings and absorb them in the Port Trust.

4. The first party MHAA resisted the statement of claim of both the unions by filing their written statement at Ex-70. They denied there is any closure as stated in the reference. They also denied that the second party are the workmen and that they are the employees of MHAA. According to them seven businessmen at the instance of Mormugao Dock Labour Board registered the charitable society MHAA registered under Societies Registration Act 1860 to open a list of unregulated large number of unemployed persons as an employment exchange available for being hired without jumping the queue in case a fill in gap situation arose on Sundays and holidays or bunching of the ships. MHAA is not an industry. It is charitable entity in the nature of employment exchange. The said society was dissolved w.e.f. 31/07/99. The last President, Mrs. Madeline Pereira was nominated in dissolution resolution to adjust the affairs of the society's assets in the Principal District Court, Margao. In case of dissolved society MHAA, Employees Insurance Court at Margao in EIC no. 4 of 1999 in the judgement dated 13/12/2002 it is held that the MHAA was in the nature of an employment exchange of the Mini Pool workers, i.e. second party herein and MHAA was not the employer nor an industry and the said workers were not workmen. According to the first

party MHAA, the concept of closure and applicability of Chapter V B of the I. D. Act is not available and the question of illegality, unjustifiability and being bad in law does not apply to the case. MHAA's limit of the asset is the money in the adjustment of affairs, reference before the District Court. As such nothing survives for trial before this Tribunal. First party denied all the contentions taken in the statement of claim and prayed to dismiss the reference as not surviving for any trial.

5. The first party management also filed application Ex-112 for producing copies of proceedings and payment particulars from the District Court South Goa District, Margao in respect of money disbursement to the workers and to dismiss the reference in view of the directions and observations in the judgements of Hon'ble High Court. In the judgement in writ petition no.278 / 2007, Hon'ble High Court has directed District Court, South Goa to disburse the casual earnings deposited with the District Court with prorate interest accrued to the persons listed in Appendix I, II & III as they being appendices to the suit/Ref no. 1/1999 before the District Court. The District Court accordingly has taken proceedings and made orders. In the judgement, liberty was granted to the first party to produce certified copies of receipts and payments particulars and produce the same before the appropriate Tribunal. Accordingly the applicant is producing copies of proceedings, orders of payment, of particulars till date. They are orders of District Court dated 23/07/2010 directing the LIC of India to deposit money of dissolved Society by two bank drafts with the Court. Accordingly the first party has filed various applications and orders at Ex-A to H.

6. It is further contended that in the judgment dt.08/10/2009 in Appeal under ESI No.9/2003 the Hon'ble High Court in para 7 (1) held that the Stevedores Association has no activity of its own and the work which the workers are allotted by it undertake as a work of Stevedores and these workers do the same work which other Dock Labourers do. It is held that these workers are not the workers of the Respondent Association. According to the dissolved Society MHAA is not an employer of the Minipool Workers. As such reference does not survive. Therefore they prayed that the reference be dismissed.

7. The second party resisted the application vide it say at Ex-121. According to the second party the Industrial Tribunal has no power to dismiss the reference and the application is untenable in law. The application is given merely to protract the matter. The issue before this Tribunal and before Hon'ble Court were different and the question of employer-employee relationship before this Court still stands and needs to be decided expeditiously. The principles of ESI Act cannot be applied to the questions that have to be answered under I.D. Act. The judgment dated 08/10/2009 in Appeal under ESI no.9 of 2003 was restricted to the principles governing ESI Act. Employer-employee relationship cannot be made solely on the basis



of principles under ESI Act. They denied that nothing survives in reference in the light of aforesaid decision under the principle of ESI Act. The application is not maintainable. Even on merit it deserves to be dismissed. The application is filed merely to delay the proceeding. Therefore the second party prays that the same be rejected.

8. Following are the points for my determination. I record my findings thereon for the reasons to follow:

| Sr. no. | Points   | Findings            |
|---------|--|---------------------|
| 1.      | Whether the Mormugao Handling Agents Association Goa is the employer under the I.D. Act 1947 of the workers under reference? | No                  |
| 2.      | If not, whether the reference is tenable?  | No                  |
| 3.      | What order?  | As per order below. |

#### REASONS

##### Point no.1 :

9. It is the case of the first party that, the first party Mormugao Handling Agents Association is not the employer of the workmen under reference. Therefore according to them the reference is not tenable. They have also contended that, as per the order of Hon'ble High Court in writ petition no. 278 of 2007 whatever amount was due and payable to each workman was disbursed to the respective workers. Therefore according to the first party applicant, nothing remains to be determined in this reference. The ld. Adv. for the first party resorted to the judgment of Hon'ble High Court in Appeal under ESI No.9 of 2003 between the same parties, wherein the Hon'ble High Court in clear words and in the light of ruling of Apex Court in Vizagapatnam Dock Labour Board V/s. Stevedores Association Vishakapatnam & Ors. 1972 2 SCR 303 (SC) observed that,

“The Respondent Association has no activity of its own and the work, which the workers are allotted by it undertake as the work of stevedores and these workers do the same work which other dock labourers do, by no stretch it can be held that these workers are employed by the Respondent Association.”

10. This judgement is of Hon'ble Bombay High Court, in Appeal under ESI No.9 of 2003. It was the appeal filed by the Regional Director, Employees State Insurance Corporation against The Mormugao Handling Agents Association, wherein the Hon'ble High Court has held that the Mormugao Handling Agents Association is not the employer. In this respect the ld. Adv. for the second party has submitted that the said judgement of Hon'ble

High Court is under ESI Act. Therefore ratio laid down therein is not applicable to this case under Industrial Disputes Act. However while deciding the point the Hon'ble Bombay High Court has taken into account the definition of 'Industry' under Industrial Dispute Act. Therefore it cannot be said that the observation of Hon'ble High Court in respect of first party in the aforesaid Appeal ESI 9/2003 is not binding on the parties in this reference. It is finding of Hon'ble High Court in respect of the first party and its employees. Therefore the said finding of Hon'ble Court has binding effect as contemplated under Article 141 of the Constitution of India. In the light of findings of the Hon'ble High Court in ESI Appeal no. 9 of 2003, this tribunal had no option but to hold that, the first party herein the Mormugao Handling Agents Association is not employer of the workmen under reference. Therefore the reference is not tenable. Accordingly I decide this point no.1 in the negative.

##### Point No. 2 :

11. In the light of discussion and findings in the above point no.1, it is clear that the first party is held not employer of the workmen under reference. As there is no employer-employee relationship between the parties the reference is not tenable. Furthermore the ld. Adv. for the first party also pointed out that the first party was a Society registered under Societies Act. The said Society came to be dissolved and the amount lying therewith was deposited in the District Court. The said amount was distributed amongst the workmen as per the directions of Hon'ble High Court given in Writ Petition 278 of 2007. The ld. Adv. for the first party further submitted that as the Society is dissolved the individual members thereof cannot be held liable to the activities of the Society. In support of his argument the ld. Adv. resorted to Apex Court ruling in Dharam Dutt & Ors. V/s. Union of India & Ors. AIR 2004 SC 1295. In para 30 of the judgement the Hon'ble Court observed that;

“Once a company or corporation is formed, the business which is carried on by the said company or corporation is the business of the company or corporation and is not the business of the citizens who get the company or corporation formed or incorporated and the rights of the incorporated body must be judged on that footing alone and cannot be judged on the assumption that they are the rights attributable to the business of individual citizens. In our opinion, the same principle as has been applied to the Company and Corporation would apply to the society registered under Societies Registration Act 1960.”

12. Furthermore as the amount lying with the society was deposited in the District Court and the same was disbursed as per the order of Hon'ble High Court, question of any further payment by the society or the individual

members thereof does not arise. In this respect further I would like to point out that, as the first party herein is held not employer of the workmen under reference, the reference is not tenable.

13. The point raised by the first party by Application Ex-112 in respect of maintainability of reference is decided on merit and it is held that the first party is not employer. It is also held that, the first party had deposited the amount of the workmen in the District Court and Hon'ble High Court in Writ Petition no.278 of 2007 directed the District Court to disburse the amount to the respective workers. It is also discussed in the aforesaid order that the individual members of the dissolved society are not responsible for the liability of the society. As Tribunal has decided Ex-112 in favour of the first party and held that first party is not the employer. Therefore the industrial dispute and reference is not maintainable. In this back drop the issues herein which are based on law point and the maintainability of the reference goes to the root of the reference. Therefore I think it proper to pass the award in the light of order passed below Ex-112. Accordingly I decide this issue no.2 in the negative and proceed to pass the following order:

#### ORDER

The reference stands rejected as the same is not maintainable, with no order as to cost.

Date: 21/08/2013

K. B. KATAKE, Presiding Officer

नई दिल्ली, 23 जनवरी, 2014

**का.आ. 487.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मोरमुगांव हैंडलिंग एजेंट्स एसोसिएशन गोआ के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, मुम्बई के पंचाट (संदर्भ संख्या 192/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-01-2014 को प्राप्त हुआ था।

[ सं. एल. 36011/5/99-आईआर (एम) ]

जोहन तोपनो, अवर सचिव

New Delhi, the 23rd January, 2014

**S.O. 487.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 192/1999) of the Central Government Industrial Tribunal/Labour Court No. 2, Mumbai now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Mormugao Handling Agents Association, Goa and their workman, which was received by the Central Government on 20-01-2014.

[No. L-36011/5/99-IR (M)]

JOHAN TOPNO, Under Secy.

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

**PRESENT :** K.B. KATAKE, Presiding Officer

**REFERENCE NO. CGIT-2/192 of 1999**

Employers in relation to the management of Mormugao Handling Agents Association

The President,  
Mormugao Handling Agents Association,  
Pereira Chambers,  
Vasco-da-Gama  
Goa 403 802.

AND

Their Workmen

1. The General Secretary  
Mormugao Waterfront Workers Union  
2<sup>nd</sup> floor, Mukund Building PO Box No.90  
Vasco-da-Gama  
Goa 403 802.

2. The General Secretary  
Gomantak Mazdoor Sangh  
Kamakshi Niwas, Gr. Floor  
Khandapa Band  
Ponda, Goa.

#### APPEARANCES :

For the employer : Mr. D. B. Ambekar, Advocate

For the Union No. 1 : No appearance.

For the Union No. 2 : Mr. P. Gaonkar, Advocate

Camp: Goa, dated the 21<sup>st</sup> August, 2013.

#### AWARD

The Government of India, Ministry of Labour & Employment by its Order No.L-36011/5/99-IR (M), dated 09.09.1999 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication :

“Whether the action of the management of Mormugao Handling Agents Association, Goa in closing their establishment w.e.f. 31/7/1999 without issuing notice and paying retrenchment compensation to the concerned workmen is legal and justified? If not, to what relief the concerned workmen are entitled?”

2. In response to the notice, second party union no.1 filed their statement of claim at Ex-26. According to them Mormugao Handling Agents Association was a Society registered under the Cooperative Societies Act 1860. About 861 casual labourers were in the employment of Mormugao Handling Agents Association. The Mormugao Handling Agents Association became the de facto and de-jure employer of these workmen. On 31/7/1999 about 500 workers i.e. members of union no.1 were

employed under the MHAA. Wages were not paid to them from December 1997 onwards. Therefore they approached the Assistant Labour Commissioner (C), Goa. On the report of the ALC (C), Ministry of Labour sent the reference to this Tribunal. The unions herein prays that, the MHAA be declared as the true and rightful employer of the workers and also prays to direct the first party to pay the wages of the workers from 1/12/1997.

3. As per orders passed on Ex-18, Gomantak Mazdoor Sangh is added as party to this reference. They filed their statement of claim at Ex-99. According to them the workers under the reference were employed by the Mormugao Port Trust. However their wages were paid through Mormugao Handling Agent Association. The wages of the workers were not paid from December 1997 till 30/7/1999. The union no. 2 therefore prays to declare the action of MHAA in not paying the wages to the workmen from December 1997 as illegal and unjustified. They also pray to direct MPT & MHAA to pay the wages for the period December 1997 till 31/7/99 with interest.

4. The first party Mormugao Handling Agents Association (MHAA) resisted the statement of claim of both the unions by filing their written statement at Ex-123. According to them the substantial question of law as to whether the dissolved Society MHAA was the employer in respect of the workers under reference has been decided in negative by Hon'ble Bombay High Court, in the judgement dated 8/10/2009 in Appeal under ESI No. 9 of 2003 of The MHAA is held not employer of the workers under reference, thus question of payment of wages to these workmen by the first party does not arise. As such nothing survives for adjudication before this Tribunal. First party denied all the contentions taken in the statement of claim and prayed that the reference be dismissed as dose not survive.

5. The first party management also filed application Ex-124 for producing copies of proceedings and payment particulars from the District Court South Goa District, Margao in respect of money disbursement to the workers and seeking dismissal of the present reference in view of the directions and observations in the judgements of Hon'ble High Court. According to the first party in the judgement in writ petition no. 278/2007, the Hon'ble High Court has directed District Court, South Goa to disburse the casual earnings deposited with the District Court with prorate interest accrued to the persons listed in Appendix I, II & III as they being appendices to the suit/Ref no. 1/ 1999 before the District Court. The District Court accordingly has taken proceedings and made orders. In the judgement, liberty was granted to the first party to produce certified copies of the receipts and payments particulars and to produce the same before the appropriate Tribunal. Accordingly the applicant is producing copies of proceedings, orders of payment till date and particulars thereof. They are orders of District Court dated 23/07/2010 directing the LIC of India to deposit money of dissolved

Society by two bank drafts with the Court. Accordingly the first party has filed various applications and orders at Ex-A to H.

6. It is further contended that in the judgment dt. 08/10/2009 in Appeal under ESI No.9/2003 the Hon'ble Bom. High Court in para 7 (1) held that the Stevedores Association has no activity of its own and the work which the workers are allotted by it undertake as a work of Stevedores and these workers do the same work which other Dock Labourers do. Honb'le Court held that these workers are not the workers of the Respondent Association and the Association is not their employer. As such this reference does not survive. Therefore they pray that the reference be dismissed.

7. The second party resisted the application vide it say at Ex-135. According to the second party, the Industrial Tribunal has no power to dismiss the reference and contended that the application is untenable in law. The application is given merely to protract the matter. The issue before this Tribunal and before Hon'ble Court were different and the question of employer-employee relationship before this Court still stands and needs to be decided expeditiously. The principles of ESI Act cannot be applied to the questions that have to be answered under I.D.Act. The judgment dated 08/10/2009 in Appeal under ESI no.9 of 2003 was restricted to the principles governing under ESI Act. Employer-employee relationship cannot be made solely on the basis of principles under ESI Act. They denied that nothing survives in reference in the light of aforesaid decision. According to them the application is not maintainable. Even on merit it deserves to be dismissed. The application is filed merely to protract the proceeding. Therefore the second party prays that the same be rejected.

8. Following are the points for my determination. I record my findings thereon for the reasons to follow:

| Sr. no. | Points   | Findings           |
|---------|--|--------------------|
| 1.      | Whether the Mormugao Handling Agents Association Goa is the employer under the I.D.Act 1947 and whether there exist employee employer relations between the workers under reference and the first party? | No                 |
| 2.      | If not, whether the reference is tenable?  | No                 |
| 3.      | What order?  | As per final order |

#### REASONS

##### Point no.1 :

9. It is the case of the first party, Mormugao Handling Agents Association that, it is not the employer of the workmen under reference. Therefore according to

them the Reference is not tenable. They have also contended that, as per the order of Hon'ble High Court in writ petition no. 278 of 2007 whatever amount was due and payable to each workman was disbursed by the District Court to the respective workers. Therefore according to the first party applicant, nothing remains to be determined in this reference. The Ld. Adv. for the first party resorted to the verdict of Hon'ble High Court in Appeal under ESI No. 9 of 2003 between the same parties, wherein the Hon'ble High Court in clear words and in the light of ruling of Apex Court in Vizagapatnam Dock Labour Board V/s. Stevedores Association Vishakapatnam & Ors. 1972 2 SCR 303 (SC) observed that,

“The Respondent Association has no activity of its own and the works which the workers are allotted by it undertake as the work of stevedores and these workers do the same work which other dock labourers do, by no stretch it can be held that these workers are employed by the Respondent Association.”

10. The said appeal ESI No. 9 of 2003, was filed before Hon'ble Bombay High Court by the Regional Director, Employees State Insurance Corporation against the present first party i.e. Mormugao Handling Agents Association, wherein the Hon'ble High Court has held that the Mormugao Handling Agents Association is not employer. In this respect the Ld. Adv. for the second party has submitted that the said judgement of Hon'ble High Court is under ESI Act. Therefore ratio laid down therein is not applicable to this case under Industrial Disputes Act. However while deciding the point the Hon'ble Bombay High Court has taken into account the definition of 'industry' under Industrial Dispute Act. The Hon. Court has also relied on the Apex Court ruling in the case of Vizagapatnam Dock Labour Board (supra). Therefore the argument on behalf of the second party is devoid of merit that, the findings of Hon'ble High Court in the aforesaid Appeal ESI 9/2003 is not binding on the parties, in this reference under I. D. Act 1947. It is finding of Hon'ble High Court in respect of the relations of the first party with the workmen under reference. Therefore the said finding of Hon'ble Court has a binding effect as contemplated under Article 141 of the Constitution of India. In the light of findings given by Hon'ble High Court in ESI Appeal no. 9 of 2003, I hold that, the first party herein i. e. the Mormugao Handling Agents Association is not employer of the workmen under reference. Therefore this reference under I. D. Act is not tenable. Accordingly I decide this point no.1 in the negative.

#### Point No. 2 :

11. In the light of discussions and findings in the above point no.1, it is clear that the first party is not employer of the workmen under reference. As there is no employer-employee relationship between the parties the reference is not tenable. Furthermore the Ld. Adv. for the first party also pointed out that first party was a Society

registered under Societies Act. The said Society came to be dissolved and the amount lying therewith was deposited in the District Court. The said amount was distributed amongst the workmen as per the directions of Hon'ble High Court given in Writ Petition 278 of 2007. Ld. Adv. for the first party applicant further submitted that, as the Society is dissolved, the individual members thereof cannot be held liable to the activities of the Society. In support of his argument the Ld. Adv. resorted to Apex Court ruling in Dharam Dutt & Ors. V/s. Union of India & Ors. AIR 2004 SC 1295. In para 30 of the judgement the Hon'ble Court observed that :

“ Once a company or corporation is formed, the business which is carried on by the said company or corporation is the business of the company or corporation and is not the business of the citizens who get the company or corporation formed or incorporated and the rights of the incorporated body must be judged on that footing alone and cannot be judged on the assumption that they are the rights attributable to the business of individual citizens. In our opinion, the same principle as has been applied to the Company and Corporation would apply to the society registered under Societies registration Act 1960.”

Furthermore as the amount lying with the society was deposited in the District Court and the same was disbursed as per the order of Hon'ble High Court, question of any further payment by the society or the individual members thereof does not arise. In this respect further I would like to point out that as the first party herein is held not employer of the workmen under reference, the reference therefore is not tenable.

12. The points raised by the first party, in the Application Ex-124, in respect of maintainability of reference is decided on merit and it is held that the first party is not the employer. It is also held that the first party had deposited the amount of the workmen in the District Court and Hon'ble High Court in Writ Petition no. 278 of 2007 directed the District Court to disburse the amount to the respective workers. As Tribunal has decided Ex-124 in favour of the first party and held that first party is not employer. Therefore the industrial dispute and reference against it is not maintainable. In this back drop the issues herein which are based on the same points can be answered as they are issues on law point and the maintainability of the reference goes to the root of the reference. Therefore I think it proper to pass the award in light of order passed below Ex-124. Accordingly I decide this issue no. 2 in the negative i.e. the reference is not tenable. Thus I proceed to pass the following order:

#### ORDER

The reference stands rejected as the same is not maintainable, with no order as to cost.

Date: 21/08/2013

K. B. KATAKE, Presiding Officer



नई दिल्ली, 23 जनवरी, 2014

**का.आ. 488.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आई बी पी कंपनी लिमिटेड, पानीपत रिफाइनरी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. 2, दिल्ली के पंचाट (संदर्भ संख्या 11/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-1-2014 को प्राप्त हुआ था।

[सं. एल-30012/49/2004-आई आर (एम)]  
जोहन तोपनो, अवर सचिव

New Delhi, the 23rd January, 2014

**S.O. 488.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 11/2005) of the Central Government Industrial Tribunal/Labour Court No. 2, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the Management of M/s. IBP Co. Limited, Panipat Refinery and their workman, which was received by the Central Government on 20-1-2014.

[No. L-30012/49/2004-IR (M)]  
JOHAN TOPNO, Under Secy.

#### ANNEXURE

**CENTRAL GOVERNMENT INDUSTRIAL  
TRIBUNAL-CUM-LABOUR COURT-II,  
ROOM NO. 33, BLOCK-A, GROUND FLOOR,  
KARKARDOOMA COURT COMPLEX,  
KARKARDOOMA, DELHI 110 032**

**Present :** Shri Harbansh Kumar Saxena

**ID No. 11/05**

Sh. Tejbir Singh

Versus

IBP Co., Panipat Refinery, Beholi, Panipat.

#### AWARD

The Central Government in the Ministry of Labour vide notification No L-30012/49/2004-IR(M) dated 20.01.05 referred the following industrial Dispute to this tribunal for the adjudication :—

“Whether the action of the Management IBP Co. Ltd. in terminating the services of Shri Tejbir Singh S/o Shri Hoshiar Singh, Shilling Operator w.e.f 30.03.2000 is just and legal? If not, to what relief the workman concerned is entitled?”

On 23.02.2005 reference was received in this tribunal. Which was register as I.D No. 1/05 and claimant was called upon to file claim statement with in fifteen days from date

of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

After service of notice workman/claimant filed claim statement on 20.6.2005. Wherein he stated as follows:-

1. That the Ministry of Labour/Shram Mantralaya, Govt. of India, New Delhi, through its under secretary, vide order No. L-30012/49/2004-IR (M) dt. 20.01.2005 has referred the Industrial Dispute of above said workman to this Hon'ble court for adjudication with the following terms of reference :—

#### SCHEDULE

“Whether the action of the Management IBP Co. Ltd. in terminating the services of Shri Tejbir Singh S/o Shri Hoshiar Singh, Shilling Operator w.e.f. 30.03.2000 is just and legal? If not, to what relief the workman concerned is entitled?”

2. That the workman has been working as shilling Operator under the kind vigilance, watch & ward of the Management with a salary of Rs. 3300 p.m. since 20.8.1998 to 30.3.2000 constantly; and as such without any break even for a day during this long tenure of over 589 days i.e. one year & about 8 months with due diligent and in a very efficacious manner.

3. That the work and conduct of workman has been quite satisfactory, sincere and honest and he never got any chance from his superior officers and Management to displease them at any point of time during this long tenure of rendering services with the Management and always got excellency while due discharging of his official duties entrusted to him as Shilling Operator (RWF), IBP Co. Ltd., Refinery Panipat (Haryana).

4. That the management, despite the loyalty and on devotion to work entrusted, dispensed with the services of workman since 1.04.2000 without assigning any reason; and even without complying with the essential requisites of law. Also a month's notice and a month's pay required under law also could not be paid to the workman. Hence, deliberately and intentionally violated all provisions enshrined under the I.D. Act :

Hence this claim petition for redressal of his grievances by the mercy of this Hon'ble Court.

5. That not only this, but even at the time of terminating the services of workman on 30.3.2000, the principles of natural justice have also not been followed, such as that no show cause notice ever issued to, nor an opportunity provided to hear workman in person or though his legal representative at all which has been caused to him as per provisions of law; hence violated the due process of law; which is crystal clear that the rules of natural justice have not been followed by the Management intentionally and deliberately for no fault of the workman.

6. That apart from this, no cogent reasoning has been given while dispensing with the services of workman and only orally ordered the workman not to attend to his duties since 1st April, 2000. However, it is astonished to see that no allegations of any kind were ever framed against the workman prior to termination of services of diligent workman; hence to do so by management against the workman is nothing more than to do a thing without adhering to the due process of law; and such deeds of management are deemed to be abuse of mis-using of power, keeping aside all rules & regulations establishment under the Law of Land.

7. That besides this, the persons junior to the workman are still working in the said concern of management, but because they have approaches upto the high-ups; hence just to adjust/appoint one of their (management) own person named—Sh. Rajesh S/o (Not known) *Rio* Not known, but management

The workman has been made escape got for no fault of his own and discrimination made between employee employed of the same concern; hence this claim petition for re-instatement of workman with payment of back wages retrospectively.

8. That since the workman has been posted with the Management since 20.8.1999 in the post of Shilling Operator in a salary of Rs. 3300 P.M. and was also absorbed by management; and as such has been working on their behalf in and outside the refinery, having permanent I.Card attendance register and fully under the kind control & Supervision of management and hence was an employees of it since 20.8.99 to 30.3.2000.

9. That the workman had been collecting his monthly salary directly on 7th day of calendar month from management like other employees concern, hence to allege the workman as a contractor or a man of contractor Sh. Gupta is nothing more than to misguide this Hon'ble Court, as workman never got salary from Sh. Gupta or on his behalf from management; hence to allege the workman as a contractor is totally false & fabricated just to deprive him off from his lawful claim of reinstatement. Also contract of Sh. Gupta was finished after six months of appointment of workman in 1999, whereas workman continued to work with the management till his services were dispensed with.

10. That apart from this, no charge-sheet was also served upon the workman vis-a-vis no seniority list was issued during this tenure intentionally and deliberately and a person inwhom they (management) were interested and who was junior to the workman, was appointed; which is again in contravention of the provisions of I.D. Act, 1947 for which the workman supposed to be considered sympathetically; hence this petition for claim. Also the management issued experience certificate twice declaring him an employee and not a contractor.

11. That also no permission, as required under the law, was ever obtained from Govt. while terminating the services of workman u/s 25(o) of I.D Act; hence again irregularities in adhering to the law of land; which requires rectification by the mercy of this Hon'ble Court/Tribunal in favour of workman and hence this Petition.

12. That then a legal notice was also served upon Management on 5.10.2002 requesting them to re-instate the workman, but to no avail (copy enclosed).

13. That then a demand notice was also served upon management on 27.10.2002, but that too got no response. Also many representations sent to management by workman too get no fruit (copy enclosed).

14. That the workman also raised an Industrial Dispute before Conciliation Officer Faridabad but that too got no fruit because of hostile and rigid attitude of Management as result of which said conciliation proceedings failed.

15. That the workman, in this way, despite best efforts made, could not set any alternative employment elsewhere and as such is still wandering jobless and is totally un-employed.

16. That the said deeds of management is unjustifiable, illegal and also against the provisions of law. The management as such I liable to re-instate the workman retrospectively with full back wages and continuity in service till date of his dispensing with his services.

It is, therefore, most humble and respectfully prayed that this Hon'ble Court may kindly be pleased to :-

- (i) Quash the oral orders passed by the management dt. 30.3.2000 against the workman;
- (ii) Re-instate the workman with full back wages/ salaries and all consequential benefits accrued to workman;
- (iii) Issue any other orders/directions which this hon'ble Court /Tribunal may deem fit & proper in favour of workman and against the management to meet the ends of justice.

**Against claim statement management filed following written statement on 4.03.2006:-**

(i) That there has never been any employee-employer relationship between the claimant and the Management. The services of the claimant were engaged by an independent contract namely M/s Mohinder Pal Gupta who was providing services to the management at the Panipat Terminal. The said contractor had then engaged the services of the claimant for, the activity of rake loading. This job has conducted in the premises of M/s. Indian Oil Corporation situated at Beholi, District

Panipat. Hence, even the premises whereat the claimant rendered services was not that of the Management but that of another independent Company viz M/s. Iridian Oil Corporation.

(ii) That during the period August, 1998 to September, 1999, M/s. Mohinder Pal Gupta was engaged as Contractor at the Panipat Terminal. The claimant was the workman employed by the said Contractor. The payment for the services rendered by the Contractor were released by the Management to him by cheque directly of the basis of the bills raised by the Contractor.

(iii) That the claimant was the employee. of the said contractor, subsequently, he set-up firm in the name and style of M/ Tejvir Singh Beniwal. He got the said firm duly registered with the Management as a contractor. Hence, the Claimant in October, 1999 was awarded of rake loading pending finalization of Registration of Contractors and placement of the Work Order. Hence, the Claimant continued as a Contractor under the name and style of M/s. Tejvir Singh Beniwal for the period October, 1999 to March 31, 2000. Thereafter, the Contract stood concluded by efflux of time. I was not renewed by the management at eh Panipat Terminal. In the circumstances, the Earnest Money Deposit (EMD) of Rs. 2,500 was duly refunded to the claimant vide Management's voucher dated March 17, 2000. During this period the claimant in his capacity as a Contractor had been raising Bills for services rendered which was based on the number of tank wagons handled by him during the relevant period i.e. October 1999 to March, 2000.

(iv) That at no stage there has ever been any employer-employee relationship by and between the Management and the Claimant. On the contrary, the Claimant had been providing the services as an independent contractor for which he had been raising Bills towards the rake loading charges on a month to month basis. The Bills so raised, were duly settled and cleared after deduction of tax deducted at source (TDS) as per the provisions of the Income Tax Act under Section 194-C as applicable for contractors and not for employees.

Further , as on date there is no dispute or difference in respect of this business arrangement. The Claimant has never been paid wages or salary by the Company. He was an independent Contractor. He was not the employee of the Management Company; had that been a fact, the Claimant would have been required to contribute to statutory Schemes such as Provident Fund, Superannuation Benefit Funds and the like, since no employee of the Management is exempted from the said Schemes.

(v) Notwithstanding the above, the procedure followed by the Management with regard to recruitment of an employee is that a formal written request is submitted

to the concerned employment Exchange to forward a list of suitable candidate for employment based on the profile of the employee required. Thereafter, the Management follows an elaborate recruitment procedure. The policy and rules in this regard are strictly adhered to by the Company, most particularly, as they have been a Government of India' owned company and are therefore required to statutorily comply with such norms and procedures with regard to recruitment of an employee viz. mandatory code for Scheduled Tribes and Scheduled Castes, other Backward Classes and the like.

(vi) Further, when a person is employed in the services of the Company, he is mandatorily issued an appointment letter. The employee is required to undergo compulsory medical tests, medical check-up, verification of character, antecedents and the like. However, in the instant case the claimant was never issued any Appointment Letter; as his service were not engaged as an employee. Hence, the demand of the Claimant is without any basis or foundation. In fact, the Claimant, as Contractor provided services on mutual agreed terms and conditions, for which he raised regular Bills that were duly honored.

(vii) That the Hon'ble Supreme Court of India in the case of Jawahar Lal Nehru technological University versus Smt. T Sumalatha & other, reported as AIR 92003) SC page 3877.

The court held that the regularization of the Respondents who were so appointed as Investigators in the Nodal Center set up by the University does not justify their regularization in service. They cannot be regarded as employees of the University. The court further observed that Employees not appointed by following due process of selection and inducted to perform jobs which were expected from Post Graduate students on part time. basis cannot sustain the plea for Regularization.

(viii) That the procedure followed by the Management is that after a person is employed through the process recruitment; that employee is mandatorily required to sign the Attendance Muster Register maintained in the Establishment for the purpose of recording the presence of the Employee in the Establishment. Whereas, the name of the Claimant does not appear on such Register, which is a legal requirement. Hence, there is no doubt that the Claimant was never an employee with the Mngement. He was never recruited in their services, consequently he cannot allege that his services were wrongly or illegally terminated.

In the light of aforesaid, the Claimant's plea that he worked for more than 240 days does not hold any legal ground. The Claimant merely provided services as a contractor only and not as an Employee. The madras High Court in the case of Cholan Roadways Corporation Smt Kumbakonam vs Presiding Officer, Labour Court,



Cuddalore & others, reported as 2004 LLR page 13, has held that where Bus Cleaner were being paid Rs. One per bus for cleaning of bus; they will not be deemed "Workman" under Section 2(s) of the Industrial Disputes Act, 1947 when they were not attending the work compulsorily and were coming at their sweet-will. Further, they will not be entitled to any relief even though they have worked for more than 240 days in the preceding 12 months. The Court held that the test to determine whether the Petitioners were "workmen" of the Employer in the strict sensu it was imperative to determine whether there was any compulsion to attend duties and whether they were duly appointed for an existing or a sanctioned post or were they appointment through a process of selection. Merely having rendered 240 days service in the preceding 12 months would not determine the issue.

(ix) From the foregoing facts, it is amply clear that M/s. Tejvir Singh Beniwal was never an Employee of IBP Company Limited at Panipat. On the Contrary, he was aggrieved by the non-renewal of his business contract and hence has raised the present industrial dispute.

Without prejudice to the aforesaid Preliminary Submissions parawise reply to the Statement Claim is as under :—

#### **Parawise reply to the statement of Claim;**

1. Contents of paragraph one of the statement of claim are a matter of record and hence needs no reply; particularly as the same is a reproduction of the Terms of Reference submitted to this Hon'ble Tribunal for adjudication under the provisions of the law.

2. Contents of paragraph two of statement of claim are false and hence specifically repudiated. It is submitted that the Claimant was never employed by the management and that there was an Employee-Employer relationship by and between the parties. It is further specifically denied that the claimant was employed as a Shilling operator under the alleged vigilance, watch and ward of the Management or that was no post of Shilling Operator with the Management and he was never paid wages. He is therefore required to tender cogent evidence in support of his claims and contentions as set out in his Statement of Claim.

Furthermore, it is specifically denied that the claimant was in continuous and regular employment without any break for a day during the alleged period from August 20, 1998 to March 30, 2000. I, therefore, put to very strict proof of his such false and baseless contentions.

3. Contents of paragraph three of the Statement of Claim are false and hence denied. It is specifically repudiated that the claimant was employed as a workman with the Management much less as Shilling Operator, IBP company Limited; Refinery Panipat, Haryana as alleged. Hence, he is put to strict proof of his ascertains with regard to his employment with the Management.

4. Contents of paragraph four of the statement of claim are false and hence denied. It is specifically denied that the Management terminated the services of the workman effective from April 01, 2000 without assigning any reason or without complying with the essential requisites of the law. As the Claimant was not an employee of the Company, no requirement for payment of notice pay or any compliance under the provisions of Industrial Disputes Act, 1947 as alleged is tenable.

5. Contents of paragraph five of the statement of Claim are false and hence denied. It is reiterated that the claimant was never an employee of the Management. In the circumstances, the principles of natural justice as are available and applicable to an employee viz., issuance of a Show Cause Notice and the like including conducting of a Domestic Enquiry are wholly misconceived and untenable. Hence, the claimant is put to strict proof of the averments, ascertains, allegations and contentions as set out in his claim.

6. Contents of paragraph six of the statement of claim are false and hence denied. It is specifically repudiated that the management terminated the services of the Workman and/or only orally ordered the Claimant not to attend his duties effective from April 01, 2000. As stated herein above the claimant was never a Workman employed by the Management. In the circumstances, the contentions of the claimant that he was not served with a chargesheet and/or that the Management terminated his service without adhering to the due process of law including violated the rules and regulations established under the law of the land are wholly misconceived and hence repudiated.

7. Contents of paragraph seven of the Statement claim are false and hence denied. It is specifically denied that any person junior to the claimant was employed by the Management. It is further denied for want of knowledge that Mr. Rajesh son of not known, resident of not known was junior employee to the Claimant and/or that said Mr. Rajesh had approached the high ups; hence was appointed by the management in their service; thereby causing discrimination between the employee and employer. These are very serious allegations made by the Claimant; hence he is put to strict proof of his such baseless and motivated allegations.

8. Contents of paragraph eight of the statement of claim are false and hence denied. It is repudiated that the claimant was employed with the management as a workman effective August 20, 1999 on the post of Shilling Operation on a monthly salary of Rs. 3,300. On the contrary it is submitted that there is no post of shilling operation in the company. Hence, the claimant is put to strict proof of his ascertain that while he was working with the Management, outside the Refinery he was issued a permanent Identity Card or that his name is reflected in the Attendance Register



and/or that he continued to work under the control and supervision of the management during the period August 20, 1999 to March 30, 2000. These are baseless averments and the claimant is put to strict proof of the same.

9. Contents of paragraph nine of the statement of claim are incorrect and hence denied. The claimant is put to strict proof that he had been collecting his monthly salary directly on the seventh days of the calendar month from the Management like other employees of the concern. On the contrary, on a perusal of the payments made to the claimant it would be abundantly clearly that the payments varied from month to month based on the services provided. To illustrate he was paid an amount of Rs. 9,100 in respect of his bill dated January 02, 2000. In respect of his bill dated March 04, 2000 he was paid an amount of Rs. 9,436/- for the work carried out as Contractor. Hence, the payment in respect of tank, wagons loading contract varied based on the jobs performed and the quantum of such services.

It is, however, noteworthy that the Claimant admits having been employed by Mr. Gupta for a period of six months during 1999. In fact, after Mr. Gupta left the contract was awarded to the claimant's firm namely M/s. Tejvir Singh Beniwal.

10. Contents of paragraph ten of the statement of claim are false and hence denied. It is reiterated that the claimant was not a workman or employee of the Management; in the circumstances, there was no requirement for issuance of a chargesheet and for drawing of seniority list and for with regard to compliance under the provisions of Industrial Disputes Act, 1947. On the contrary, the claimant is put to strict proof of his averments and assertions as set out in the corresponding paragraph of the statement of claim.

Admittedly, the claimant was favoured with an Experience Certificate as he had requested for the same to facilitate him to obtain gainful employment elsewhere. The certificate stated that he had done good work in supervision of tank, wagon, rake loading activities, in his capacity as contractor. During this period the claimant was engaged as a contractor by the company. He was then seeking employment of a permanent nature elsewhere. The Certificate was issued to him on his request so as to enable him to strengthen his credentials in seeking employment elsewhere. The fact that the claimant was a contractor is also evident from the letter dated September 04, 1999 requesting the company to avail of his services as a contractor. The second is the bill dated 02, January, 2000 for Rs. 9,100 towards work carried out as a Contractor. The third is his bill dated March 04, 2000 for Rs. 9,436/- towards work carried out as a contractor. The truth of the matter is that the claimant dishonestly wanted to collect evidence in support of his claim for employment with the

management and in the circumstances has through misrepresentation obtained from individual employees, who are not authorized to issue certificates letters in his favour. In any event the letters relied upon by the claimant are tampered with and hence cannot be relied upon.

11. Contents of paragraph eleven of the Statement of claim are misconceived and hence denied. It is reiterated that the claimant was no a "Workman" under the provisions of the Industrial Disputes Act, 1947. Further, there was no employee-employer relationship by and between the parties. In the circumstances, the applicability of the said Act, is specifically untenable. Hence the contention of the claimant that the management did not seek prior permission under Section 25(o) of the Industrial Dispute Act is wholly untenable. In any event, the applicability of the said provision of law is wholly untenable to the facts of the present case.

12-15 Contents of paragraph twelve to fifteen of the Statement of claim are incorrect and hence denied. The Management received the letters dated October 05, 2000 and October 27, 2000 the same were duly replied to. Subsequently, an alleged industrial dispute was raised before the Learned Conciliation Officer whereas the management participated and duly explained their version of the matter. As there was no possibility of reinstatement of the Claimant in the services of the Management the proceedings stood concluded.

16. Contents of paragraph sixteen of the Statement of claim are misconceived and hence denied. It is specifically repudiated that the claim action of the management is either unjustified or illegal or against the provisions of the law. On the contrary, as stated hereinabove there was never any employee-employer relationship by and between the parties. In the circumstances, the provisions of the Industrial Disputes Act are wholly inapplicable to the facts and circumstances of the case. The claimant initially was employed by M/s. Mohinder Pal Gupta, Contractor as his employee. Subsequently, he was a Contractor in his own right. In the circumstances, the contentions urged by the claimant in these proceedings are wholly misconceived and untenable. The claimant is not eligible and/or entitled to any relief whatsoever.

It is, therefore most humbly and respectfully prayed that this Hon'ble Court be pleased to pass an Award in Favour of the management; be further pleased to hold that the alleged industrial dispute raised by the claimant is misconceived and untenable, amongst others for the reason that there was no employer and employee relationship whatsoever by and between the parties. In the circumstances the claimant is not eligible or entitled to any relief whatsoever including the claim for reinstatement in service with or without back wages and for consequential benefits as alleged.

**Rejoinder on behalf of claimant to the written statement of the management :—**

1. That para No.1 of Preliminary objection of written statement is totally wrong and hence vehemently denied. The fact is that there are/were complete relations of employer -employee between the parties as per provisions of Section 2(s), I.D. Act as the answering claimant was totally under the Watch Award including governance of management and never got contractorship at all; hence to allege that there no relations of both is totally incorrect and hence denied.

2. That para No. 2 of Preliminary objections of Written Statement is also incorrect and hence denied. That fact is that the claimant being an employee, always got salaries through the management, but not through alleged contractor—M/s. M.P. Gupta at all nor the answering claimant was a contractor as alleged in para No.1 of Preliminary objections. As such being an employee of management, the answering claimant always got salaries through the management directly. Hence, to allege that he was employee of Contractor M/s. Gupta or as alleged in para 1 of the Preliminary objections above that he was an independent contractor is totally wrong and hence denied.

3. That para No.3 of the Preliminary objection is again wrong and hence denied and those of para No.2 of the Preliminary objection I retreated. As far as the question of contractorship is concerned, even after seeking the services of previous contractor Sh. M.P Gupta, no such orders of replacing the claimant as contractor was never issued from management side as per law at all. Hence, to allege him on oral presumptions can't be deemed to be so; hence the workman ipso fact can not be called or deemed to be a contractor, nor it was ever published in newspaper etc. Besides this, the workman/claimant on the other hand, was issued I/Card, sheeliag chit, tally sheets, Rly. Challans, Rly. Freight challan etc. which are not handed over to an ordinary person at any cost, but to a faithful and trustworthy employee of the management. Not only that even once a tally sheet was faxed to partappur (meerut) duly signed by Terminal Manager, IBP panipat wherein wagons were filled in by the claimant and sent to partapur; hence all such happenings shows that the claimant was an employee of management and not a contractor as alleged by management.

A far as the deposit of Rs. 2500 as earnest money (FMD) is concerned, it was returned to claimant when contractorship was not provided to him by management while he was in service as an employee, but it was returned on the same analogy that he was an employee and an employee can't get contractorship while in service of management. Remaining allegations are totally false and fabricated just to save skin of management from the responsibility of providing claimant a permanent job.

4. That para No. 4 of Preliminary objections is also incorrect and hence denied, being repetition of previous paras. However, it is better-known to a management as to why such alleged deductions could not be made from salaries of employee and it appears to be intentional and deliberate to deprive the claimant of his fundamental right.

5. That para No.5 of Preliminary Objection is again wrong and hence denied. However, it is not known as to how the services of one Rajesh who was junior to claimant and never sponsored by any employment exchange, but earn than absorbed in service permanently as he was man of means, having approach upto the high-ups; hence discrimination has been caused between employee and employee by management and, to conceal that gross mistake, the management has stated making all sorts of allegation, which are totally wrong and baseless and hence denied.

6. That para no. 6 of the Preliminary Objection is again wrong and hence denied, being the repetition of earlier paras, hence retreated reply para 5 of Preliminary objection again.

7. That para No.7 of the Preliminary Objection is again incorrect and hence denied. However, the referred citation must be observed in the light of the observations made by Hon'ble supreme court in "D.K. Yadav Vs. M/s. I.M.A Industrial Ltd 1993(67) FLR 111(SC), supra 1976(32) FLR 197(SC), 1977(35) FLR 353(SC); (1982)1 SCC 645 and 1985 (51) FLR 494."

As such the alleged allegations are totally false and fabricated just to divert the attention from reality to an irrelevant point.

8. That para No.8 of the Preliminary Objection is again wrong and hence denied. The claim of answering workman is very much well within the ambit of Section 2(s) of I.D. Act, 1947 being an employee of management and completed the requisite period satisfactorily, hence allegations made are baseless having no weightage at this juncture and hence denied.

**On Merits :**

1. That para No. 1 of the W.S needs no comments being admitted.

2. That para No. 2 of W.S is incorrect and hence denied and those of correspondence para of claim petition are hereby retreated.

3-7. That paras Nos. 3 to 7 are wrong and denied and those of contents of paras in the claim petition are hereby re-instated.

8-16. That para Nos. 8 to 16 of W.S. are wrong and hence denied and those of contents of corresponding paras in the Claim Petition are hereby re-asserted.

That Prayer para is also wrong in the W.S. and hence denied, and those of Prayer paras in the Claim Petition are hereby re-affirmed.

**My Ld. predecessors has not framed any issue but proceed to adjudicate the present reference on the basis of schedule wherein questions of determination were as follows:-**

Whether the action of the management IBP Co. Ltd. in terminating the services of Shri Tejbir Singh S/o Shri Hoshiar Singh, Shilling Operator w.e.f. 30.3.2000 is just and legal? If not, to what relief the workman concerned is entitled?

**Workman filed Amended Affidavit in his evidence on 5.3.2007. Wherein he stated as follows:-**

1. That the workman has been working as Shilling Operator under the vigilance, watch and ward of the management with the salary of Rs. 3300 per month, since 20.08.1998 to 30.3.2000, constantly without any break during this long tenure of rendering services over 589 days i.e. one year and about 8 months efficiently.

2. That the Management despite the loyalty and devotion to the work, dispensed with the services of workman since 1st April, 2000 without assigning any reasons; and even without complying with essential requester of law.

3. That even at the time of terminating the services of the workman/deponent on 30.3.2000, Principles of natural justice could not be followed and as such no show cause Notice was ever issued nor an opportunity provided to the deponent in person or through his legal representative at all and as such violated the due process of law.

4. That apart from this no cogent reasoning has been given while dispensing with the services of the workman/deponent and only orally ordered by the Management that the workman need not to attend his duties since 1st April, 2000 and hence the services were dispensed with.

5. That besides this, the persons junior to the workman/deponent are still working in the said Management as they have approaches upto the high-up and as such one of them named Rajesh has been appointed whereas he was junior to the workman/deponent and as such discrimination has been caused between employee and employees of the same concern; hence the claim of the workman/deponent to reinstate with full back-wages falls within the ambit of law.

6. That since the workman/deponent has been posted with the management since 20.8.1998 in the post of Shilling Operator in the pay salary of Rs. 3,300 per month was also likely to be absorbed by the Management, as he was having issued permanent I.Card, Attendance Register and other related documents mentioned in the Rejoinder were fully under the control and supervision of the Management and hence all these documents show that the workman/deponent was an employee of the management since 20.8.1998 till 30.3.2000.

7. That the workman/deponent had been collecting his salary directly on 7th day of every calendar month from Management like other employees of the company and as such the workman was never under the guidance a Contractor of the man of contractor Shri Gupta.

8. That apart from this no charge-sheet vis-a vis no seniority list was ever issued during this tenure by the Management intentionally and deliberately and as such it was all in contravention of the provisions of I.D. Act, 1947 for which the management was supposed to follow, on the basis of seniority of the workman/deponent.

9. That no permission as required under the law was ever obtained from Government while terminating the services of the Workman uls 25(o) of I.D. Act; hence irregularities in adhering to the rules have been followed by the management.

10. That then the workman/deponent also served a Legal notice upon the Management on 5.10.2002 when having found no other way out, requesting them to reinstate the workman , but that too got no fruit, hence the petition filed. (Ex. WW-1/8 which is already place on record in the claim petition) is exhibited.

11. That thereafter a demand notice was also served upon the Management by the workman/deponent on 27.10.2002, but that too got no response, apart from other representations as well as in person were sent to the Management by the workman/deponent. (Copies of the same are already on record in the petition and as such marked as Ex. WW-1/1).

12. That all other documents have already been placed on record by the workman/Deponent with the petition from page 8 to 43 of the list of documents filed with the petition and as such is therefore marked as Ex. W-1/2 to Ex. WW-1/14.

13. That the workman/deponent also raised Industrial Dispute before the Conciliation Officer, Faridabad but that too got no fruit because of hostile attitude of the management, as a result of which the Conciliation proceedings failed.

14. That the workman/deponent in this way could not settle any alternate employment elsewhere and as such still wandering jobless and as such is totally unemployed.

15. That the said deeds of management are unjustified, illegal and also against the provisions of law for which the management is liable to reinstate the workman retrospectively with full back wages and continuity in services; hence this claim petition.

**He tender his affidavit and annexed document to affidavit.**

**He was cross-examined by Ld AIR for the Management.**

**His Cross-examination is as follows:-**

I have passed my matric examination and can produce the copy of the same before this Court. I have



also subsequently qualified the ITI exam and can produce Certificate in support.

I was working for IOC at Panipat depot.

The rake loading was done under my supervision.

I have got this training from IOC.

The work done by me was in respect of IBP . I did not do the work for HPC, BPC or IOC.

It is correct that I have claimed that I was working schilling operator with M/s. IBP Co. Ltd.

In this regard I have filed photocopies B12 to B48. I have original of these papers.

It is wrong to suggest that I am making a false statement that I was an employee of IBP and that the documents referred to by me and filed before this Court are true and correct.

It is correct that letter dt. 17.04.2003 was given to me by the management. It is correct that Ir. Dt. 4.9.99 is the letter submitted by me to the management bears by signature and is Ex. WW1/M1.

I had got letter dt. 5/10/2002 sent by my advocate. It is correct that the documents filed by me in Court. I do not have the original.

It is correct that the premises where I was working at Baholi in panipat, Haryana was the premise of IOC.

It is correct that I have requested the terminal Manager for an experience Certificate. It is wrong to suggest that the certificate was asked for by me to obtain service elsewhere. This Certificate Ex.WW1/M2 was requested for by me from the terminal manager for purpose of my employment with IBP Co. Ltd.

Ex. WW1/M3 was the letter given by IBP to IOCL to permit me to work at the premises.

It is correct that every person entering the IOC terminal premises is required to obtain an identity card.

The forwarding note animals or general merchandise etc. is the document I used to give top the railway official sitting at the IOC site after the rake was dispatched.

The entries in the tally sheet were made by me. It was completely made by me. It was given along with the forwarding note to the Railway. The original was given to the terminal manager and a copy to the Railways.

It is correct that at point Mark A on tally sheet prepared by me Ex. WW1/M4 reflect the fact that the work done by me was in respect of IOC, HPC, BPC and IBP.

It is correct that on forwarding note Ex. WW1/M5 I have signed on the top of the document. I have signed on top of the document at the instance of the terminal manager. It is wrong to suggest that the terminal manager had never asked me to so sign. It is further wrong to

suggest that I myself signed on he said documents to create evidence in my favour in respect of my employment with IBP.

I have filed photocopies of packing slip as proof of my employment with IBP Co.

I Joined IBP Co. on 20.8.98 and worked till 30.3.2000. I do not have any document to show to the Court that I was in continuous regular service of IBP Co. Ltd. during that period. I used to get Rs. 3300/- by cash and then on some occasions by cheque. I had a bank account which was opened for me by the Co. I cannot bring any document in support but was having the account in Canara Bank, Panipat branch.

Similarly I do not have any evidence in support of what I have stated in para 5 of my affidavit.

It is correct M/s. IBP Co is a wholly Govt./owned Co.

It is correct that at the time of entry to the petroleum refinery every person in physically checked and given get pass/ID card.

It is wrong to suggest that I was not a direct or regular employee of IBP Co. Ltd .

It is wrong to suggest that I was an employee of Mr. Mohindar Pal Gupta, contractor who was providing services at the panipat terminal for doing rake loading at the refinery.

It is wrong to suggest that I worked with Mr. M.P. Gupta contractor during the period August 98 to Sep. 99.

I do not know as to whether or not during the period June 99 to Sep. 99 Mr. M.P. Gupta did not pay the workman at the terminal properly and regularly.

It is wrong to suggest that I had initially worked as a worker of Mr. M.P. Gupta contractor and that subsequently I myself undertook this activity as a contractor with IBP Co.

It I correct that I had given the Management a letter to do the work as an independent contractor at the IOC refinery. Volunteered but I was not given any such contract.

It is wrong to suggest that I had worked for a period of 6 months during 99 with Mr. M.P. Gupta, contractor. It I further to wrong to suggest that after the M.P. Gupta left, I had taken the contract in my name i.e Tejvir Singh Beenwal.

It is correct that I had approached the Co. to be registered as a tank wagon loading contractor.

I had applied to work as a self employed tank loading contractor on a rate of Rs. 25/- per wagon loaded but I was not given this contract.

It is correct that there is a Trade Union in the company. But I was not made a member of the same.



Sh. Indersingh the pradhan of the union refused to make me a member of the Union.

I was not made a member of the said Union because I was told that I should wait for some more time before I could be taken as a member of their union. I am a member of the Bhartiya Mazdoor Sangh.

I cannot produce Mr. Rajesh in Court in my support.

It is wrong to suggest that I am deposing falsely with regard to the said Mr. Rajesh.

It is correct that the ID Card filed by me dt. 1.1.2001 does not bear any photograph. Again said it is not an ID Card but an entry gate pass.

It is correct that my case before this court is that I used to supervise the rake loading at the premises of the IOC Baholi.

It is wrong to suggest that I was given the contract at the IOC premises between Oct. 1999 and March 31.2000 and on its conclusion the Management with me to provide such service came to an end, as the arrangement was renewed with. It is correct that on 17.3.2000 I was refunded an amount Rs. 2500/- Vol. this amount was returned to me in respect of my application to work as contractor with M/s. IBP as I was not given the contract.

I am presently residing at my village -Kavvi in Dt. Panipat.

I am living with my parents and other family members. My family are engaged in agriculture activities as we have agricultural land of our own. I am pursuing work in the village as an agriculturist. Although I am an ITI pass and can do mechanical and other jobs but I am doing so as no work is available.

**Thereafter he closed his evidence.**

**Management in support of its case filed affidavit of management witness Shri Jagdish Prasad. Wherein he stated as follows:-**

1. I state that I am working with M/s. IBP Company Ltd., now known as Indian Oil Corporation, since May 15, 1987, and I am currently designated as Senior Depot Manager situated at Rajkot, Gujarat.
2. I state that at the relevant time i.e. July 1998 to April 2004, I was posted as Terminal Manager at IBP Company Ltd., Panipat, Haryana. During my tenure, I state on basis of records that Mr. Tejbir Singh, son of Mr. Hoshirya Singh resident of Village and Post Office, Kawi, Tehsil, Madlauda, District Panipat, Haryana (hereinafter referred to as the Claimant), was engaged by an independent Contractor namely M/s. Mohinder Pal Gupta who was providing our Company, services at the Panipat Terminal. The said

Contractor had then engaged the services of the Claimant for the activity of Rake Loading. This job was conducted in the premises of M/s. Indian Oil Corporation situated at Baholi, District Panipat. Hence, even the premises whereat the Claimant rendered services was not that of M/s IBP Company Ltd. But that of another independent Company viz. M/s Indian Oil Corporation.

3. I state that during August 1998 to September 1999, M/s Mohinder Pal Gupta was engaged as a Contractor at the Panipat Terminal. The Claimant was the workman employed by the said Contractor. The payment for the services rendered by the Contractor were released to him by cheque directly on the basis of bills raised by the Contractor from time to time.
4. I state that the Claimant was the employee of the said Contractor. However, subsequently, he set up a Firm in the name and style of M/s. Tejbir Singh Beniwal (Exhibit WWI/M1). He got the said firm duly registered with our Company, as an independent Contractor. Hence, the Claimant in October 1999 was awarded the contract of Rake Loading, pending finalization of Registration of Contractors and placement of the Work Order. Accordingly, the Claimant continued as a Contractor under the name and style of M/s Tejbir Singh Beniwal for the period October 1999 to March 31, 2000.
5. I state that thereafter the contract stood concluded by efflux of time. It was renewed by the Management at the Panipat Terminal. In the circumstances, the Earnest Money Deposit (EMD) of Rs. 2,500 was duly refunded to the Claimant vide Management's voucher dated March 17, 2000 (Exhibit MW 1/1). During this period, the Claimant in his capacity as a Contractor had been raising bills for services rendered, which was based on the number of tank wagons handled by him during the relevant period i.e. October 1999 to March 2000.
6. I categorically state that at no stage, there has ever been any employer-employee relationship by and between the Management and the Claimant the contrary, the Claimant had been providing the services as an independent Contractor for which he had been raising bills towards the Rake Loading Charges on a month to month basis. The work was performed and executed by him either alone or with the assistance of a few hands independently employed him. However, he never employed 20 or more workers to execute the Contract.

Consequently, the provisions of the Contract Labour (Regulations & Abolition) Act, 1970, did not apply.

7. I state that the nature of duties performed by the claimant were intermittent, erratic and purely casual in nature. It was in this perspective that the Claimant was required to submit bills from time to time for services rendered by him based specifically on the quantum of services provided. He was not paid a fixed monthly wage. Further, as the Claimant had been providing services as an independent Contractor for which he had been raising bills towards Rake Loading Charges on a month to month basis; the bills so raised were duly settled and cleared after deduction of tax at source i.e TDS as per the provisions of the Income Tax under Section 194-C as applicable to Contractors and not for employees.
8. I state that the Claimant was never paid wages or salary by the Company. He was an independent self-employed Contractor. He was never the employee of the Management Company, had that been fact, the Claimant would have, at the beginning of his employment, been issued an Appointment Letter. His employment would have been through the concerned Employment Exchange as the procedure followed by the Management with regard to recruitment of an employee is that a formal written request is submitted to the concerned Employment Exchange to forward a list of suitable candidates for employment based on profile of the employee required.
9. That our Company follows a labour recruitment procedure; as we are a wholly government owned Company and are required under the law to strictly adhere and comply with all Regulations in this regard. We are under the administrative control of the Ministry of Petroleum & Natural Gas, Government of India. In this regard, it is imperative to state that the norms and procedures' with regard to recruitment of an employee are mandatory in nature and include due consideration for Scheduled Tribes and Scheduled Castes and Other Backward Classes besides mandatory Police verification of antecedents, verification of character, meeting medical norms based on medical examination conducted by duly authorized and nominated hospital/medical practitioner and the like. Further, all employees in the Company are required to contribute to statutory schemes amongst others Provident Fund, Superannuation Benefit funds and the like; since no employee of the Company is exempted from the said Schemes.
10. I state that the Claimant was never issued an Appointment Letter as his services were not engaged as an employee. Hence, the assertion of the Claimant that he was an employee of our Company is without any basis or foundation. On the contrary, he provided services as a Contractor on mutually agreed terms and conditions, for which he raised regular bills that were duly honored.
11. I state that the procedure followed in the Company in respect of its employees is that the Employee is mandatorily required to sign the Attendance-cum-Muster Register maintained in the Establishment for the purposes of recording the presence of the employee in the Establishment. Whereas, in the case at hand, the name of the Claimant does not appear on any such Register which is a legal requirement. Hence, there is no doubt that the Claimant was never an employee of the Company. He was never employed or recruited in our services; consequently, he cannot allege that his services were wrongly or illegally terminated by the Management.
12. I state that in the light of aforesaid facts, the Claimant's plea that he worked for more than 240 days does not hold any legal ground. The Claimant merely provided services as a Contractor and not as an employee. In this regard, I rely upon the decision of the Madras High Court in the case of Cholan Roadways Corporation Ltd. Kumbakonam Vs. President Officer, Labour Court, Cuddalore & others, reported as 2004, LLR, Page 13, has held that where Bus Cleaners were being paid Rs. 1 per bus for cleaning of bus; they will not be deemed "Workman" under Section 2(s) of the Industrial Disputes Act, 1947, when they were not attending the work compulsorily and were coming at their sweet-will. Further, they will not be entitled to any relief even though they have worked for more than 240 days in the preceding 12 months. The Court held that he test to determine whether the Petitioners were "Workmen" of the Employer in the Stricto sensu, it was imperative to determine whether there was any compulsion to attend duties and whether they were duly appointed for an existing or a sanctioned post or were they appointed through a process of selection. Merely having rendered 240 days' service in the preceding 12 months would not determine the issue.
13. I state that the case of the Claimant in these proceedings is that he was employed as a Shilling

Operator with effect from March 30, 2000; which fact is borne out first in the Terms of Reference issued by the Ministry of Labour, Government of India, to this Hon'ble Court for adjudication. Further, the Claimant himself in paragraph two of his Statement of Claim has stated "That the workman has been working as Shilling Operator under the kind vigilance, watch and ward of the Management with a Salary of Rs. 3,300 (Rupees Three Thousand Three Hundred only) per month since August 20, 1998 to March 30, 2000, constantly". Whereas, there is no post, title or designation of a Shilling Operator in our Company. Hence, on the basis of this assertion of the Claimant, the alleged industrial dispute raised by him is nonest and void abinitio since I categorically state on oath that we have no post of Shilling Operator and have had any such post in our Company. In the absence of any such a post, the very basis and foundation of the claim and the dispute raised by the Claimant is untenable and needs to be prima facie dismissed.

14. I state that the assertion and contention in these adjudication proceedings that he was in continuous and regular employment without any break for a day during the alleged period from August 20, 1998 to March 30, 2000, is a blatant falsehood. Whereas, during the relevant time i.e August 1998 to September 1999, he was an employee of M/s. Mohinder Pal Gupta, Contractor, and that effective October 1999 till March 30, 2000, he was a self-employed Contractor providing our Company services and that at the relevant time was the Terminal Manager at the said site.
15. I state that at the relevant time at the Refinery, no person by the name of Mr. Rajest was employed in our Company as a person junior to the Claimant and/or that he was appointed by the Management in the services of the Company and/or that there has been any discrimination in this regard. Further, as the claimant was never an employee of our Company, the requirement of complying with disciplinary procedures such as issuance of Show-cause Notice conducting Domestic Enquiry and the like are wholly misconceived and untenable. However, as the refinery area is a high security area, consequently no person can enter the premises without the issuance of an Identity Card. The said Identity Card issued to an employee of our Company is entirely distinct and different to that issued to a Contractor and/or workman of the Contractor to perform certain specified duties

and assignments within the premises of the Refinery.

16. I state that the claimant never ever worked under the direct supervision and control of any employee of our Company including myself, although I was then the Terminal Manager at the said Refinery and that the ultimate authority in respect of work to be performed or executed on the said premises was in my hands. The job assigned to the Claimant as Contractor was to ensure that the Petroleum products filled in the railway tank wagons was as per the concerned Depot Chart available along with the respective wagon. Hence, the Applicant was merely required to ascertain whether the product was in conformity with the Depot Chart available. This activity is not a routine or daily activity, on the contrary, it is performed only and is performed based on exigencies of the work intermittently; for which payment was also made specifically based on the number of tank wagons filled. Consequently, there was question of payment of any fixed monthly wage or salary to the Claimant. In this regard, I submit. that on a perusal of payments made to the Claimant, it would be abundantly clear that the payments varied from month to month based on the services provided. To illustrate, he was paid an amount of Rs. 9,100 (Rupees Nine Thousand One Hundred only) in respect of his bill dated January 2, 2000. In respect of his bill dated March 4, 2000 he was paid an amount of Rs. 9,436 (Rupees Nine Thousand Four Hundred Thirty Six Only) for the work carried out as a Contractor. Hence, the payment in respect of tank wagons loading Contract varied based on the job performed and the quantum of his such services.
17. I state that the claimant was favoured with an Experience Certificate as he had requested for the same to facilitate him to obtain gainful employment elsewhere. The Certificate stated that he had done good work in supervision of tank wagon rake loading activities in his capacity as a Contractor. During this period, the Claimant was engaged as a Contractor by the company. He was then seeking employment of a permanent nature elsewhere. The Certificate was issued to him on his request purely on humanitarian grounds, so as to enable him to strengthen his credentials in seeking employment elsewhere.
18. I state the fact that the Claimant was Contractor is also evident from the letter dated September 4, 1999, Exhibit MW1/M1, requesting the Company to avail of his services as a contractor. Similarly, the bill dated January 2, 2000, for an

amount of Rs. 9,100 (Rupees Nine Thousand One Hundred Only), towards the work carried out as a Contractor is Exhibit MW 1/2. Further, the claimant's bill dated March 4, 2000, for Rs. 9,436 (Rupees Nine thousand four Hundred Thirty Six only) towards the work carried out as a Contractor is Exhibit MW1/3.

19. I state that the truth of the matter is that the claimant dishonestly wanted to collect evidence in support of his Claim for employment with our Company, in the circumstances, had through misrepresentation obtained the Experience Certificate. Further the letters relief upon by the Claimant are tampered with and, therefore, cannot be relied upon as I myself am the author of the said communication.
20. I state that the Management received letters dated October 5 and 27, 2000; the same were duly replied to. Subsequently, an industrial dispute was raised before the Conciliation Officer whereat the Management participated and duly explained their version of the matter. As there was no question of reinstatement of the claimant in the services of the Management, the proceedings stood concluded.
21. Finally, I state that the Claimant, Mr. Tejbir Singh Beniwal, was never an employee of Ms/IBP Company Ltd at Panipat. He was initially employed by M/s. Mohinder Pal Gupta, Contractor, as his employee. Subsequently, the Claimant himself was the Contractor in his own right. I confirm that the Claimant had on September 4, 1999, submitted a letter to me requesting that he be registered as a Contractor for tank wagon loading more particularly as he had prior 18 months' experience on a similar assignment for M/s. Hindustan Petroleum Corporation and M/s. Bharat Petroleum Corporation. This letter of the claimant was submitted to me, which I duly processed, and then he operated as a Contractor. He was aggrieved by the non-renewal of his business contract. In the Circumstances, he has raised the present industrial dispute falsely stating that he was a Shilling Operation with effect from August 1998. Hence, the Claimant is not eligible and/or entitled to any relief of any nature whatsoever from this Hon'ble Court as there was absolutely no employer-employee relationship by and between the parties as mandated under the law of the land.
22. I state that Exhibit WWI/10 is the document issued by me to the Claimant to facilitate him to seek alternative gainful employment elsewhere.

However, this letter has been deliberately and mischievously tampered as is evident from the fact that he has mentioned his date of joining as August 20, 1998. Further I have clearly stated in the said Certificate that I was issued to him on his request for exploring job possibilities.

23. I state that Exhibit WWI/12 was issued by me to facilitate the Claimant to obtain a Gate Pass so that he could attend to loading of tank wagons. I also confirm that I had issued the Certificate dated March 1, 2000, Exhibit WWI/12. It clearly states that the Claimant was engaged for the same job that the Contractor, Mr. Mohinder Pal Gupta was performing. This Certificate again was issued by me at his request to help him to obtain alternative gainful employment. I further admit that I had issued the letter in my own handwriting date January 9, 2001, Exhibit WWI/12 wherein I had conveyed to the authorities to permit Mr. Tejbir Singh, our Contractor's employee, who work in the railway gantry as our representative at the said premises up to January 20, 2001.
24. I admit that the Claimant was issued the Entry Gate Pass dated January 2001 valid up to February 29, 2001, it bears my signature and is Exhibit MW1/4. It was issued as a standard security requirement for work in the Panipat Petroleum Terminal and not as an Employee of our company.
25. I state that the forwarding Note- Animals or General Merchandise other than Dangerous, Goods, Exhibit WWI/13, is a false and fabricated documents. It has been filed before this Hon'ble Court with the sole purpose of creating evidence in his favour. The said documents bears the signatures of the Claimant at the top right of the document only to create evidence in his favour whereas there is absolutely no requirement either under our procedure or under our regulations that the person who checks the tank wagons is so required to sign on such document. Hence, the said document need to be ignored.

**He has tendered his affidavit & he was cross-examined by Ld A/R for the Workman.**

**His statement and cross-examination is as follows:-**

It is incorrect to suggest that Tejbir Singh was the employee of the management and he was not an independent contractor. As far as I recollect, M/s Mahinder Pal Gupta started his contract with the management w.e.f. August 1997 and his contract lasted for about one year. I saw the claimant Tejbir Singh working with Mahinder Pal Gupta, Contractor, as his worker in July 1998 when I joined the management at Panipat. After Mahinder Pal Gupta,



Contractor, left us, the claimant Tejbir Singh, who by then had obtained sufficient training, offered us a contract which we accepted and the said contract was renewed from month to month for the period October 1999 to March 2000. It is correct that no notice or pay in lieu of notice or any retrenchment compensation was paid by the management to the claimant as, according to the management, such things did not apply to the case of the claimant. It is incorrect to suggest that we have not done such things and the workman was required to be dealt with accordingly, and, as such, we have violated Section 25-F of the I.D. Act. I have been shown paragraph 24 of my affidavit and after seeing the same I say that document Exb. MW1/4 was not issued to the claimant and his photograph does not appear on the back of this document which is a gate pass. It of course has been signed by me as Incharge of the Panipat Depot. It is incorrect to suggest that I am not deliberately retracting from the admission made by me in Para 24 of my affidavit wherein I have admitted that this gate pass was issued to the claimant Tejbir Singh. It is incorrect to suggest that documents Exb. MW1/1 to MW1/3 are not genuine documents which have mentioned by me Para 18 of my affidavit. It is incorrect to suggest that at the time of employing the employees we used to get signature of such employees on blank papers and we used such papers for any purpose required by us. It is wrong to suggest that I have sworn a wrong and false affidavit or that I have deposed falsely. It is wrong to suggest that some person by the name of Rajesh, was appointed subsequent to Tejbir Singh or that he was regularized and we violated the principle of last come first go. It is wrong to suggest that the claimant has a legitimate claim for the management.

On 9.11.2013 My Ld Predecessors impleaded Indian Oil Corporation Ltd. as respondent No. 2 in the Instant ID. An opportunity was giving to it for filing Written Statement on its behalf on 9.7.2013. Respondent No. 2 moved an application through which he expressed its willingness to adopt Written Statement filed on 4/3/2006 by previous respondent. Which was allowed by this Tribunal on 12/9/2013 and 1/10/2013 was fixed with the consent of A/R's of parties for arguments as Ld A/R for respondent No. 2 express desire not to adduce any evidence.

**Management filed written submission on 16/12/2013 in which it mentioned as follows :-**

1. That the present industrial dispute is pending adjudication before this Hon'ble Industrial Tribunal and is fixed for passing of final Award.

2. That the said industrial dispute was referred to this Hon'ble Industrial Tribunal vide Reference Order dated January 20, 2005, with the following Terms of Reference :

Whether the action of the management IBP Co. Ltd. in terminating the services of Shri Tejbir Singh S/o Shir Hoshiar Singh, Shilling Operator w.e.f. 30.3.2000 is just

and legal? If not, to what relief the workman concerned is entitled?

3. That in accordance with the said Reference Order, the parties to the industrial dispute filed their respective pleadings. The Claimant filed his Statement of Claim dated June 20, 2005. The Management M/s IBP Company Ltd., the original contesting Management, filed its Written Statement dated March 4, 2006.

4. That the parties to the dispute filed their respective evidence by way of Affidavits. The claimant deposed himself as the sole witness on his behalf in order to prove his contentions and assertions. On the other hand, the then contesting Management, M/s. IBP Company Ltd., produced Mr. Amit Thapliyal, the then Senior Depot Manager, situated at Rajkot, Gujarat.

5. That the cross-examination of the Claimant was recorded on November 5, 2007, and the cross-examination of the witness of the Management was recorded on July 28, 2010. Subsequently, the claimant moved an Application dated September 20, 2011, praying before this Hon'ble Industrial Tribunal to array M/s. Indian Oil Corporation Ltd. as one of the parties to the present industrial dispute in view of the fact that the earlier contesting Management viz. M/s. IBP Company Ltd. had merged operations with M/s. Indian Oil Corporation Ltd. The management filed its Reply to the said Application and the Hon'ble Industrial Tribunal was please to array M/s. Indian Oil Corporation Ltd. as the contesting Management in the present industrial dispute.

6. That the Claimant, vide his Statement of Claim, has alleged that he was an employee of M/s. IBP Company Ltd. and was employed as a Shilling Operator. He has further alleged that he was being paid his salary by the Management of M/s. IBP Company Ltd. and that he also received an Experience Certificate from the said Management, he was also issued an Identity Card of the Management. Hence, based upon the above contentions and assertions and alleged documents, the claimant, vide his Statement of Claim, has sought to contend that he was an employee of the management of M/s. IBP Company Ltd. who terminated his services with effect from March 30, 2000 and thus, prayed before this Hon'ble Industrial Tribunal for reinstatement with full back wages.

It is noteworthy to mention that the said contentions are frivolous, baseless and without any foundation and the same were repudiated and denied by the answering Management vide its Written Statement while clarifying the proper factual position.

7. That the Management, vide its Written Statement, clarified the exact factual position that the Claimant was never an employee of the Management, of M/s. IBP Company Ltd. and there existed no employer-employee relationship by and between the Claimant and the

answering Management. In fact, it is pertinent to state that the Claimant was employed by one of the Contractors namely M/s. Mohinder Pal Gupta engaged by the Management at its Panipat Terminal. The claimant worked under the supervision, direction and control of the said Contractor during the period August 1998 to September 1999. It is noteworthy to mention that the Contract of M/s. Mohinder Pal Gupta coming to an end in September 1999 by efflux of time, the said Contract was extinguished and then not renewed. It is imperative to mention that by the said time, the Claimant had established his own Firm and had become a Contractor in his own right and requested the Management to avail of his services vide letter dated September 4, 1999, Exhibit WW1/M1. Thus, his services were availed of as an independent Contractor.

8. That the Claimant was never employed with the Management which is evident from the fact that the Claimant alleged that he was appointed as a Shilling Operator with the Management; the said fact being absolutely false as no such post ever existed with the Management and the same has also been clarified by the witness of the Management through his evidence by way of Affidavit, as also during his cross-examination recorded before this Hon'ble Tribunal. Further, it is noteworthy to mention that the Claimant was given a Contract as a Contractor commencing from October 1999 which ended on March 31, 2000. Subsequent to the same, as the Contract had come to an end, he was refunded his earnest money deposited amounting to Rs. 2,500/- vide correspondence dated March 17, 2000, Exhibit MW1/1. It is also essential to mention that during the period that the Claimant was engaged as an independent Contractor, he raised bills/invoices on the Management for the amount of work executed by him which were duly paid. The said bill/invoice dated January 2, 2000 for an amount of Rs. 9,100/- is Exhibit MW1/2 and the bill/invoice dated March 4, 2000 for an amount of Rs. 9,436 is Exhibit MW1/3 are documentary evidence in support of the Management's case in these proceedings that establish the claimant was not an employee of the Management but was an independent Service Provider.

9. That it is imperative to mention that the Management of M/s. IBP Company Ltd., being a Government entity (Public Sector Undertaking), was and is still required to follow a defined procedure for recruitment of employees on its roll. The mandatory protocol to be adhered to that the Management has to place a request with the Employment Exchange for an employee with the desired skills through which it is offered details of candidates who are eligible for such an appointment. Hence, the assertion of the Claimant that he was an employee of the Management of M/s. IBP Company Ltd. also falls flat, based on the fact that the management could not have employed him directly without the above mentioned due procedure, and in support thereof, is

statutorily required to produce his letter of Appointment duly issued by the Company/Management.

10. That it is essential to mention that the Claimant was never issued an Appointment Letter nor does his name reflect in any of the record of the Company, as an employee of the Management viz. Attendance Registers maintained by the Management of M/s IBP Company Ltd. for its own employees. Further, the Identity Card issued to the Claimant was merely done to facilitate him to execute the work of rake loading assigned to him as an Independent Contractor. It is also noteworthy to mention that the Experience Certificates relied upon by the Claimant, were issued to him by the Management on his own request whereby he stated that he was searching for employment and thus required a reference from the Management in order to ascertain the veracity of his experience. However, on the institution of the present industrial dispute, the answering Management has realized that the same were obtained by the Claimant through deceit and under misrepresentation to the Management and solely for the purpose to stake claim for employment with the Management/Company.

11. That the documents filed by the Claimant in these proceedings, in fact, support the case of the Management. To illustrate, the letter dated September 4, 1999, Exhibit WW1/M1, in the hands of the Claimant, Mr. Tejbir Singh, addressed to the management, state as under :

“It has come to my knowledge that the Railway Department of IBP requires a Contractor for loading purposes. I have been doing the same work for the past year and a half at HPC and BPC pertaining to T/W loading. I have also worked for sometime with IBP Company Ltd. whereat I had satisfactorily executed the work of T/W loading.

I wish to register myself as a Contractor with your Company for T/W loading. My annual turnover is Rs. 3,00,000. You are requested to allow me to register as a Contractor with your Company.”

Hence, there is a clear admission on the part of the claimant that he had been providing services of loading and unloading at the Panipat Plant for M/s. HPC and BPC and even for the answering Management-IBP Company Ltd. Further, a perusal of the Complaint filed by the Claimant through his Advocate dated February 18, 2003, Exhibit WW1/3, clearing states that—“The Applicant was engaged by the Respondent Management (management of IBP Company Ltd.-Panipat) through the Contractor (who was a labour supplier).” This admission, on the part of the claimant, in his Complaint with statutory authority, establishes the fact that his engagement was never as workman/employee of the Company. Furthermore, there is absolutely no post of Operator Shilling, nor does there exist any word in the English language dictionary -Shilling. It is clear that it is pure conjecture on the part of the Claimant

to self-style himself as a workman of the Company, and that too, on the post of Operator Shilling.

On a perusal of the cross-examination of the Claimant recorded before this Hon'ble Court on November 5, 2007, the Claimant, on oath, has stated as under:

"I was working for IOC at Panipat Depot". (Hence, it is an admission that he was not working for IBP Company Ltd. He has further stated that- "The rake loading was done under my supervision. I have got this training from IOC. The work done by me was in respect of IBP. I did not do the work for HPC, BPC or IOC."

There is a clear contradiction in the statement of the Claimant in as much as he is referring to employment with IOC. Further, he is denying that he had worked for HPC, BPC or IOC. Whereas, as per Exhibit WW1/7, also Exhibit WW1/M1, which is in the hands of the Claimant himself, he had provided services to HPC, BPC. Hence, his testimony is unreliable and contradictory.

It is interesting to note that in his cross-examination, the Claimant has admitted that the documents filed by him before the Court, he does not have the originals. Consequently, the same per se cannot be considered, much less relied upon by this Hon'ble Tribunal, as per provisions of the Evidence Act.

Further, in the cross-examination, the Claimant has stated -"It is correct that I had given the Management letters dated September 4, 1999, Exhibits WW1/7 and WW1/7 and WW1/M 1, to do the work as an independent Contractor at the IOC refinery." This testimony strengthens the case of the Management for the reason that had the Claimant's statement been true that he was in continuous employment with the Management of ICP Company Ltd. as stated by him-"I joined IBP Company on August 20, 1998, and worked till March 30, 2000". The question of his applying for work as an independent Contractor at the IOC Refinery vide letter dated September 4, 1999, would not and could not have arisen.

The claimant has filed documents addressed to the Terminal Manager, IBP Company Ltd., as being request for issuance of permanent Gate Pass. A perusal of the same clearly reflects that the status of the Claimant is that of Contractor Workman for rake loading and not that as an employee of the Management Company, Exhibit WW1/12.

12. That the Claimant, even during his cross-examination, has failed to produce any cogent evidence with regard to his alleged employment with the Management. In fact, the Claimant has only relied upon an Identity Card issued to him bearing signatures of a representative of the Management. It is pertinent to state that merely issuance of an Identity Card is not the basis and foundation for proving employment as has been held by the Hon'ble High Court of Punjab & Haryana in the case of Rampat Vs. Presiding Officer, Industrial Tribunal-

Cum-Labour Court, Panipat & Another reported as 2013 LLR 323. The Hon'ble High Court has held that only Identity Card is not sufficient evidence in the absence proof of salary or wags having been paid to the workman to prove employer-employee relationship.

Further, the Hon'ble Delhi High Court in the case of Anand Prakash Vs. Godrej Sara Lee Ltd. reported as 2009 LLR 564 has held that the Labour Court is right in rejecting a dispute of a Petitioner alleging wrongful termination in case he has miserably failed to support his claim by producing any documentary evidence including the Appointment letter whereas the Management has categorically rebutted contention of the workman pertaining to his employment with the Management and also producing the record showing that the workman was never employed by the Management.

13. That the Claimant has failed to substantiate the assertions and contentions as raised by him vide his Statement of Claim. In fact, it is a well settled principle of law that the burden of proof to prove a fact lies upon the person alleging the said fact. The Hon'ble Allahabad High Court, in the case of Vinod Kumar II V. Presiding Officer, Labour Court, Agra & Another reported as 2005 LLR 1229 has held that while challenging termination of service, it is for the workman to prove employment and then wrongful termination, and on his failure to do so, he will not be entitled to any relief in a dispute before Labour Court. The Hon'ble Court has further held that the burden of proof lies heavily on the workman who has sought a reference of his dispute for adjudication by the Labour Court as the burden of proof lies initially on the party who raises an industrial dispute, and at the instance of whom, the dispute has been referred for adjudication.

14. That even in the present matter the Claimant has failed to produce any documentary evidence in the form of an Appointment Letter and/or salary slips or any other positive cogent evidence to establish an Employer-Employee relationship, in support of his alleged claim of employment with the Management.

15. That the Hon'ble Supreme Court of India in the case of Steel Authority of India Ltd. & Others Vs. National Union Water Front Workers & Other reported as 2001 Lab I.C.3656 has held that it cannot be said that by virtue of engagement of Contract Labour by the Contractor in any work of or in connection with the work of an Establishment, the relationship of master and servant is created between the Principal Employer and the Contract Labour. The Hon'ble Supreme Court has further held that even a combined reading of the definition of the term 'Contract Labour', 'Establishment' and 'Workman' does not show that a legal relationship between a person employed in an industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship. He word 'Workman' is defined in wide terms



and is a generic term of which Contract Labour is a species. The Hon'ble Supreme Court has further opined that it is true that a combined reading of the terms 'Establishment' and 'Workman' shows that a Principal Employer as a servant or master, but what is true of a workman could not be correct of a Contract Labour. When the provisions of the Act neither contemplate creation of direct relationship of master and servant between the Principal Employer and the Contract Labour nor can such relationship be implied from the provisions of the CLRA Act.

16. That in view of the specific pleadings of the Management as well as the failure on part of the Claimant to prove his alleged claims, as also based upon the legal precedents cited hereinabove; the Claimant is neither entitled nor eligible to any relief as sought by him in his Statement of Claim. In the end it is also pertinent to mention that the conduct of the Claimant in contesting the present dispute has been extremely casual and lackadaisical to say the least thereby reflecting the frivolous nature of his Claim. The record of the proceedings held before this Hon'ble Tribunal clearly indicate that the Claimant has not been attending the proceedings to even address his side of the final arguments which is a clear manifestation that even the claimant believes that there is no merit in his Claim.

It is, therefore, prayed before this Hon'ble Tribunal that an Award may be passed in favour of the Management and against the Claimant holding that the claim as stated vide the Statement of Claim is not maintainable as there exists no employer-employee relationship between the Claimant and the Management.

In the light of oral contentions and written arguments of Ld. A/R for management as none turn up to argue on behalf of Workman in this old I.D. I perused the pleadings of parties contained in statement of claim written statement and rejoinder as well as evidence of parties on record including principles laid down in cited rulings and settled law on the points plus relevant provisions of law.

Perusal of statement of workman makes it crystal clear that he specifically stated in this Tribunal that "he joined IBP company on August 20, 1998, and worked till March 30, 2000."

Thus the question of his applying for work as an independent contractor at the IOC Refinery vide letter dated 4, 1999, would not and could not have arisen because he is in service of IBP company as per his pleadings and evidence.

Perusal of letter dated 4-9-1999 Exhibit WW1/M1 of claimant Tejvir Singh addressed to the management shows that he mentioned in it as follows:-

".. I wish to register myself as a contractor with your company for T/W loading. My annual turnover is Rs. 3,00,000. You are requested to allow me to register as a contractor with your company".

Through aforesaid averments he has shown his annual income Rs. 3,00,000 as a contractor.

In these circumstances it is improbable and impossible to workman to join with management on the alleged post of shilling operator in a salary of Rs. 3,300 per month.

Moreover there is solitary statement of workman without any oral or documentary corroborative evidence. Which too is self contradictory.

Although burden of proof lies on workman to prove its case mentioned in statement of claim and rejoinder.

In addition to its management in its evidence examined MW1 Jagdish Prasad Senior Depot Manager situated at Rajkot Gujrat. Who alongwith other facts proved that workman Tejvir Singh was employed as an independent contractor in act 1999. His contract renewed from month to month upto March 2000. For which contractor had been raising bills towards the Rake loading charges on a month to month basis.

Management filed and proved following two bills submitted by workman for his payment. Out of which 1 st bill dated January 2, 2000, for an amount of Rs. 9,100 towards the work carried out as a contractor is Exhibit MW1/2.

Claimant's 2<sup>nd</sup> bill dated March 4, 2000, for Rs. 9436 towards the work carried out as a contractor is Exhibit MW1/3.

On aforesaid points workman could not dare to cross-examine the management witness hence case of management is proved.

It is admitted fact that present case is of civil nature.

Hence it is proved on the basis of preponderance of evidence.

In the circumstances of present case Claim statement is liable to be dismissed and reference is liable to be decided in favour of management and against claimant. Which is accordingly decided.

Award is accordingly passed.

Dated: 31-12-2013

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 23 जनवरी, 2014

**का.आ. 489.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सिंडिकेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक



अधिकरण/ श्रम न्यायालय, बंगलौर के पंचाट (संदर्भ संख्या 29/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-1-2014 को प्राप्त हुआ था।

[सं. एल-12012/22/2009-आई आर (बी-II)]  
रवि कुमार, अनुभाग अधिकारी

New Delhi, the 23rd January, 2014

**S.O. 489.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 29/2009) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in the Annexure in the Industrial Dispute between the employers in relation to the Management of Syndicate Bank and their workman, received by the Central Government on 23-1-2014.

[No. L-12012/22/2009-IR (B-II)]

RAVI KUMAR, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT “SHRAM SADAN”, G G PALYA, TUMKUR ROAD, YESWANTHPUR, BANGALORE-560 022

Dated : 26th December, 2013

**PRESENT :** Shri S. N. NAVALGUND, Presiding Officer

**C. R. No. 29/2009**

#### I Party

Sh. M B Chebbi,  
C/o Shri Basavantappa,  
H No. 54D, Kulkarni Galli,  
Bailahongal – 591 102  
Dist : Belgaum.

#### II Party

The Assistant General  
Manager, Syndicate  
Bank, Regional Office,  
1560, Maruthigalli,  
Belgaum – 590 002.

#### Appearances :

I Party : Shri P H Virupakshaiah, Advocate  
II Party : Shri Ramesh Upadhyay, Advocate

#### AWARD

1. The Central Government vide order No. L-12012/22/2009-IR(B-II) dated 02.06.2009 in exercise of the power conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) made this reference for adjudication with the following schedule :

#### SCHEDULE

“Whether the termination of Sri Madiwalappa B Chebbi by the management of Syndicate Bank is legal and justified ? What relief the workman is entitled to?”

2. On receipt of the reference while registering it in C R 29/2009 when the notices were issued to both the sides they entered their appearance through their

respective advocate and the I party filed his claim statement on 20.05.2010 whereas the II party its counter statement on 21.07.2010.

3. The I Party in his claim statement asserts that he who was appointed by the II Party for the clerical post under Handicapped and Disability reservation provided by the Government of India after his successful training at Syndicate Bank Staff Training/College at Bangalore was posted to its Bailahongal Branch where he joined the duty on 10.12.2007 in spite of his honest service to the satisfaction of the customers and the bank and due to the popularity earned by him some Officers of the II Party who developed animosity against him and at their instance his services have been terminated without following the mandatory service rules and labour rules and that his termination is tainted with malafide, arbitrary against the principles of natural justice. It is further alleged the Assistant General Manager, Syndicate Bank, Regional office, Belgaum had diplomatically extended his probationary period for three months and that he having joined his duty on 10.12.2007 and was served with termination order dated 28.08.2008 on 29.08.2008 he having attended the work for 242 days in a calendar year, he has been terminated in violation of Section 25(f) of the ID Act. Thus, he prays to set aside the termination order dated 28.08.2008 and to direct the II party to reinstate him into service with all consequential benefits. Interalia, in the counter statement filed for the II Party it is contended the I Party who was appointed as Probationary Clerk vide order dated 17.11.2007 on completion of one week training at Bank's Staff Training College, Bangalore he was posted to its Bailahongal Branch where he joined on 10.12.2007 and during the period of probation he was found keeping the work pending, delaying despatch of post resulting inconvenience to customer service, indulging in quarrelling with customers, refusing work allotted to him by the superiors and in spite of letters from time to time pointing out his deficiency further advising him to improve his conduct as he did not show any improvement Regional Office, Belgaum vide letter dated 14.05.2008 bringing to his notice various deficiencies in his work gave him further opportunity to improve his performance, behave well with staff and customers by extending the probationary period for further three months but as he did not show any improvement in the performance of his duties and behaviour with staff and customers and showed disrespect to the Branch Manager abusing him bringing outsiders threatening with dire consequences he was found unsuitable for confirmation and continuation in bank's service as such he was issued with discharge order dated 28.08.2008. Thus it is contended since I Party did not discharge his duties satisfactorily and did not behave properly with the customers and superiors during the probationary period and extended probationary period having found him unsuitable for confirmation and continuation in Bank's Service he has been issued with discharge order dated

28.08.2008 in terms of the letter of appointment sending him a month's salary in lieu of notice.

4. After completion of the pleadings when the matter was posted for Evidence of the II party the learned advocate appearing for the II party while examining Sh. K Surya Prakash, Chief Manager, Regional Office as MW 1 got exhibited Office copy of the appointment letter dated 17.11.2007 along with the original acknowledgement of the I party dated 23.11.2007; Original duty joining report dated 10.12.2007 of the I Party; Office copy of the letter Ref No. 47 dated 19.02.2008 of the Senior Branch Manager, Bailahongal Branch of the II Party Bank issued to the I Party duly acknowledged by him; Office copy of the letter dated 04.03.2008 by the Senior Branch manager, Bailahongala of the I Party duly acknowledged by him; Office copy of the letter dated 13.03.2008 by the Senior Branch Manager, Bailahongala addressed to the I Party along with complaint dated 12.03.2008 from Head Master, HPS Mukibhavi about the delay in payment of Teachers Salary; Office copy of the letter dated 20.04.2008 by the Senior Branch Manager, Bailahongala to the I Party; Original letter of the I Party dated 05.05.2008 addressed to the Senior Manager by name along with postal cover; Office copy of the letter dated 05/06.05.2008 by the Senior Branch Manager to the I party duly acknowledged by him with date as 14.05.2008; Office copy of the letter dated 14.05.2008 of the Chief Manager, Syndicate Bank, Regional Office advising the I Party to improve his performance with the endorsement of the senior Branch manager dated 17.05.2008 stating 'Refused to accept in person. Sent copy by Regd AD and copy displayed in the notice board'; Xerox copy of the letter dated 14.05.2008 of the Chief Manager, Syndicate Bank, Regional Office advising the I Party to improve his performance; Office copy of the Senior Branch Manager addressed to the Assistant General Manager, Regional Office, Belgaum intimating the refusal of the I Party to receive the official letter dated 17.05.2008; copy of the extract of the local delivery book dated 17.05.2008 endorsing the refusal of the I party to take personal delivery of the letter dated 14.05.2008 of the Chief Manager, Syndicate Bank, Regional Office advising the I party to improve his performance; Undelivered post returned with the postal endorsement 'Refused. Returned to sender'; Office copy of the letter dated 30.05.2008 issued by the Assistant General Manager extending the period of probation of the I Party for a further period of 3 months effective from 03.06.2008; Original letter 05.06.2008 of the senior Branch Manager, Bailahongal Addressed to the Assistant General Manager, Syndicate Bank, Regional Office, Belgaum along with attested copy of the local delivery book dated 02.06.2008; copy of letter dated 07.06.2008 of the Branch Manager, state Bank of India to the Regional Manager, Syndicate Bank, Regional Office, Belgaum; Office copy of the letter dated 17.07.2008 addressed to the I Party by the Senior Branch Manager advising the I party to regularize the loans that are

outstanding in the State Bank of India with an endorsement that 'Refused to take delivery. Affixed in notice board on 7/7/2008'; copy of the Police Complaint dated 04.09.2008 as Ex. M-1 to Ex. M-19. Interalia, the learned advocate appearing for the I party while filing the affidavit of I party examining him on oath as WW 1 got exhibited Original Disability Certificate issued by Orthopaedic Surgeon, district Hospital, Dharwad dated 15.11.1995; his degree certificate dated April-May 2005; MBA fourth semester marks card dated 17.08.2007; letter of appointment issued to him dated 17.11.2007; Office Joining Report (office copy) dated 03.12.2007; copy of Memorandum in respect of attending training dated 08.12.2007; office copy of his letter addressed to ALC(C), Hubli dated 24.11.2008; Original recommendation letter of Sh. B S Wali and Sons, S D Billur, Karadiguddi and sons, Mehaboob and Sons, Mallikarjun General and Medical Stores; Recommendation letter of customer of Mahantesh A Wali and others; statement of attendance given by Syndicate Bank, Bailahongal branch for 2007-2008; copy of letter issued by II Party to ALC(C), Hubli dated 01.01.2009; certificate issued by Senior Branch Manager, Bailahongal dated 12.04.2007 as Ex W-1 to Ex W-21 respectively and later recalling him to give further evidence got exhibited Attested copy of the declaration given by him before his appointment regarding his liabilities dated 03.12.2007; true copies of his performance report dated 10.01.2008, 11.02.2008, 08.03.2008; Attested copy of the application given by him to the Manager, Syndicate Bank, Bailahongal Branch dated 05.04.2008; True copy of his performance report dated 12.04.2008; the letter received by him from Chief Manager, Regional Office, Belgaum dated 14.05.2008; office copy of his letter addressed to II party dated 29.05.2008; the receipt and acknowledgement regarding forwarding the representation dated 29.05.2008 and its receipt; the copy of his letter dated 29.05.2008 addressed to General Manager copy of which was marked to President, Akila Karantaka Physical Action Committee, Bangalore; True copies of Five performance report dated 30.05.2008, 29.06.2008, 15.07.2008, 20.08.2008, 04.08.2008; true copy of the letter addressed by Branch Manager, Bailahongal to the Personal Cell, Regional Office, Belgaum dated 21.08.2008; copy of the letter by the Senior Branch Manager to him terminating his services dated 28.08.2008; copy of the letter addressed by the Assistant General Manager of the II party to the ALC(C), Hubli dated 21.01.2009; Letter received by him from Assistant General Manager as a reply to his RTI Application dated 19.04.2010; Letter received from Assistant General Manager dated 08.12.2010; copy of the affidavit of Sh. A. S. Chandrashekar, Assistant General manager stating that no report is available in respect of the investigation as no separate investigation was conducted on complaint against him; copy of his letter to Syndicate Bank, Bailahongal Branch; the postal receipt and acknowledgement having posted the same and received by the Branch Manager; copy of a letter

addressed by him to the General Manager dated 06.02.2008; the courier receipt and acknowledgement regarding service of his letter 06.02.2008; office copy of the letter addressed by him to the Chairman and Managing Director, Syndicate Bank, Head Office, dated 10.04.2008; the courier receipt and acknowledgement regarding service of his letter dated 10.04.2008 as Ex W-22 to Ex W-47 respectively. He also while filing the affidavits of Virupakshaiah Hiremath and Dheeraj Thudevakar claims to be the customers of Bailahongal Branch of the II Party wherein they have stated that the I party was working sincerely and humbly examined them on oath as WW-2 and WW-3 respectively. After close of the evidence of both the sides, I heard the arguments addressed by learned advocate appearing for both the sides and also gone through the citations referred to by them. The learned advocate appearing for the I Party in support of his arguments cited the following decisions :

1. 1998 (4) Kar. L J 51 – KSRTC, Sirsi Division, Sirsi vs. Hanna Baig and another
2. (1990) 3 SCC 682 – Punjab Land Development and reclamation corporation Ltd., Chandigarh vs. Presiding Officer, Labour Court, Chandigarh and others
3. AIR 1995 SC 1352 – Syed Hussaini vs. Andhra Bank Ltd.,
4. 1984 I LLJ Page 110 – KSRTC, Bangalore vs. Sheikh Abdul Khader & ors.
5. 2010 (5) SCC 497 – Anoop Sharma vs. Executive Engineer, Public Health Division No. 1, Panipat (Haryana)
6. 1994 II LLJ 462 – Suresh Chandra Mathe vs. Jiwaji University, Gwalior & ors.
7. 1996 Lab IC 1161 – Madhya Pradesh Bank Karmachari Sangh vs. Syndicate Bank and another
8. 1988 Law Suit (Bom) 339 – Virender Singh vs. Haryana Tourism Corporation Ltd.,
9. 2005 II LLJ 856 – Mary Kutty vs. The Hindustan Times, Bangalore and another
10. 2007 (3) KLI 294 – Assaram Raibhah Dhage vs. Executive Engineer, Sub-divisional, Mula
11. AIR 1999 Supreme Court 983 – Dipti Prakash Banerjee vs. Satvendra Nath Bose National Centre for Basic Sciences, Calcutta and others
12. AIR 2000 SC 1980 – V P Ahuja vs. State of Punjab and others
13. 2013 AIR SCW 76 – State Bank of India and Ors. Vs. Palak Modi and Another
1. AIR 1996 Supreme Court 2444 – K. V. Krishnamani vs. Lalit Kala Academy
2. AIR 1998 Supreme Court 327 – LIC of India and another vs. R S Rao Kulkarni
3. (1992) 4 Supreme Court Cases 719 – Govt. Council of Kidwai Memorial Institute of Oncology vs. Defence Representative. Pandurang Godwalkar and another
4. 2003 AIR SCW 478 - The Commissioner of Police, Hubli vs. R S More
5. AIR 2005 Supreme Court 792 – Municipal Committee, Sirsa vs. Munshi Ram
6. AIR 2002 Supreme Court 23 – Pavendra Narayan Verma vs. Sanjay Gandhi P G I Of Medical Sciences and another
7. ILR 2004 KAR 54 (DB) – The Management of M/s. Continental Construction Ltd., and another vs. the Workmen of M/s. Continental Construction Ltd.
8. (1994) 2 Supreme Court Cases 323 – M Venugopal vs. Divisional Manager, LIC of India, Machalipatnam, A P and Another.
9. AIR 1996 Supreme Court 660 – Jai Krishan vs. Commissioner of Police and another
10. AIR 2003 Supreme Court 1789 – Mathew P Thomas vs. Kerala State Civil Supply Corporation Ltd., and another

6. On appreciation of the pleadings, oral and documentary evidence, in the light of the arguments addressed by the learned advocates appearing for both sides, I have arrived at conclusion the termination of Sh. Madiwalappa B Chebbi being legal and justified and he is not entitled for any relief.

#### REASONS

7. There being no dispute the I Party was being appointed as a probationary clerk in the II Party Bank in the Physically Handicapped Quota as per Order dated 17.11.2007, the copy of which is produced at Ex M-1 and being terminated from service for unsatisfactory performance during the probationary period and extended probationary period giving him DD for Rs. 7160.75 paise in lieu of one month's notice as per Ex W-38 i.e., being discharged from service during the extended probationary period for unsatisfactory performance. As per clause 2 of the letter of appointment he was to be on probation for a period of six months from the date of joining which may be extended by a further period not exceeding three months depending on his performance and his services will be confirmed if in the opinion of the competent authority he satisfactorily completed the probationary period in relation to work, conduct, acquiring required level of computer literacy and pass a test which may include viva-voca in a

5. Whereas the learned advocate appearing for the II party cited the following decisions :



language other than his mother tongue and at the sole discretion of the bank without any reason with one month's notice and on payment of one month's pay and allowances in lieu of such notice his service being liable to be dispensed with. Thus as per the terms of appointment where in the opinion of the competent authority his work and conduct was found not satisfactory he was liable to be dispensed with from service with one month's notice or with payment of one month's pay and allowance in lieu of notice. The number of documentary evidence produced not only by the II Party but even the documentary evidence produced by the I Party himself do suggest that on the performance reports of his immediate superiors i.e., the Branch Manager initially his probationary was extended by three months and even during that extended three months probation period his immediate superior did not certify his work and conduct with staff and customers being satisfactory the management dispensed with his service as per the terms of the employment by sending him a Demand Draft of one month's salary as evidenced by the documentary evidence produced by the I Party himself at Ex W-38. The I party himself has produced the monthly performance report submitted by the Branch Manager for the month of December 2007, January 2008, February 2008 and March 2008 at Ex W-23, 24, 25 and 27. In the monthly performance report for December 2007 against the column No. 4 Deficiency if any he has mentioned "slow in learning, argues and quarrels with customers inspite of counselling not to do the same". He has also mentioned in the remarks column of this report that "he has quarrelled with SB Account holders of Raita Samparka Kendra – Agri Dept., Government of Karnataka". In the monthly performance report for the month of January 2008 marked as Ex W-25 the branch manager against the column no. 4 deficiencies has mentioned "slow in learning, does not evince interest in acquiring knowledge of MOI, circulars, rules etc and in acquiring computer literacy". Again in the monthly performance report for the month of February 2008 in the column No. 4 he has mentioned "without informing the branch and not getting the leave sanctioned he remained absent on 05.02.2008". In the monthly performance report for March 2008 against column No. 4 he has mentioned "he has not made any efforts to learn ALPM pertaining to PB/PS, LD, JL, does not attend to customer at this ALPM, Unauthorisedly absent from duties on 05.02.2008 letter issued on 04.03.2008, letter dated 13.03.2008, issued for keeping the work pendency. Copies already submitted to RO". When such are the performance report by the superiors during the probationary period two customers on behalf of the I Party who have been examined as WW 2 and WW 3 saying that he was working sincerely and honestly is of no assistance to the I Party to show that he worked and behaved satisfactorily during the probationary period. Under the circumstances, there being lot of material on record regarding non-satisfactory work, conduct and

behaviour of the I Party during the probationary and extended probationary period in my opinion the management has rightly as per the terms of the letter of appointment dispensed/terminated with his services sending him one month's salary in lieu of notice which is also in compliance with the mandate of section 25(f) of the ID Act. Therefore, I find no reason to say that the termination of Sh. Madiwallappa B Chebbi being not legal and justified. Accordingly, I pass the following

### ORDER

The reference is rejected holding that the termination of Madiwalappa B Chebbi by the management of Syndicate Bank is legal and justified and that he is not entitle for any relief.

(Dictated to U D C, transcribed by him, corrected and signed by me on 26<sup>th</sup> December 2013)

S. N. NAVALGUND, Presiding Officer

नई दिल्ली, 23 जनवरी, 2014

**का.आ. 490.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, नई दिल्ली के पंचाट (संदर्भ संख्या 63/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-1-2014 को प्राप्त हुआ था।

[सं. एल-12012/5/2007-आई आर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 23rd January, 2014

**S.O. 490.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 63/2011) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, New Delhi as shown in the Annexure in the Industrial Dispute between the Management of Punjab National Bank and their workman, received by the Central Government on 23-1-2014.

[No. L-12012/5/2007-IR (B-II)]

RAVI KUMAR, Section Officer

### ANNEXURE

**BEFORE DR. R. K. YADAV, PRESIDING OFFICER,  
CENTRAL GOVT. INDUSTRIAL TRIBUNAL NO. 1,  
KARKARDOOMA COURTS COMPLEX: DELHI**

**I. D. No. 63/2011**

Shri Sunil Prasad Kashyap  
S/o Ram Lakhan Prasad,  
C/o Jai Bhawani Medical Agencies,  
Racki Mohalla,  
PO. Thana. & Distt. Garva,  
Jharkhand -822114.

...Workman



Versus

The Senior Regional Manager,  
P.N.B., Regional Office at  
MDA Complex,  
Ram Ganga Vihar,  
Moradabad (U.P.)

...Management

### AWARD

On 10.04.2007, Shri Krishan Kumar deposited Rs.40,080.00 and Rs.40,080.00 at Kiratpur branch of Punjab National Bank (in short the bank) for issuance of drafts for a sum of Rs.40,000.00 each, both favouring Shri Piyush Kumar, payable at BO: Kashipur of the bank. The Head Cashier, after receiving cash, released vouchers and sent the same to the concerned clerk/cashier for preparation of drafts. The Clerk/Cashier, after entering both vouchers in cash book, entered station of draft in one case as Kashipur and for other as Allahabad, with malafide intention. Two drafts for Rs. 40000.00 each were issued favouring Shri Piyush Kumar, payable at Kashipur branch, which were later on paid at the said branch of the bank. On the same day, one draft voucher was destroyed and replaced with another voucher of similar amount for issuance of a draft, favouring Shri Ashish Kumar payable at BO: Allahabad Chowk of the bank. The draft was prepared on the basis of fictitious cash voucher mentioning name of the applicant as Sanjay Kumar. On 21.04.2007, a cash payment voucher for cancellation of the draft favouring Ashish Kumar payable at BO: Allahabad Chowk was prepared, showing cash payment to Shri Sanjay Kumar a non-existing person and it was entered in Suspense Register.

2. In the manner as detailed above, on 02.02.2009 one Shri Vijay Kumar deposited cash of Rs. 25,075.00 for issuance of a draft favouring Shri Vipin Sharma payable at GT Road, Ghaziabad branch of the bank. A draft was prepared, which was later on paid. On the same day, the draft voucher was destroyed and replaced with another voucher for issuance of draft in favour of Shri Anil Kumar payable at Allahabad Chowk branch of the bank. A draft was prepared on that fictitious cash voucher. On 03.05.1999, voucher for cancellation of the said draft was prepared on the strength of a letter purportedly of Shri Sanjay Kumar. Another draft for Rs. 25,000.00 was prepared favouring Shri Ashish Kumar payable at BO: Allahabad Chowk. Day book, credit extract and security document In and Out register in both the cases were written by the clerk/cashier. Thus, the bank was defrauded to the tune of Rs. 65,000.00.

3. The clerk/cashier, namely, Shri Sunil Prasad Kashyap was placed under suspension on 18.09.2001 and a charge sheet was served on him on 31.07.2003. No reply to the charge sheet was submitted by him, hence a domestic enquiry was constituted to look into the truth of the charges. Shri Anil Kumar Sharma was appointed as

Enquiry Officer. Shri Kashyap participated in the enquiry and on conclusion of the proceedings, the Enquiry Officer submitted his report to the Disciplinary Authority. The Disciplinary Authority concurred with the findings of the Enquiry Officer and awarded punishment of 'dismissal without notice' vide order dated 29.11.2004.

4. Appeal preferred by Shri Kashyap came to be dismissed. Shri Kashyap approached the Punjab National Bank Staff Association (in short the Association) for redressal of his grievance. The Association took up his cause and raised a demand on the bank for reinstatement of Shri Kashyap, which demand was not conceded to. Ultimately, the Association approached the Conciliation Officer. Since the bank contested the claim preferred by the Association, conciliation proceedings ended into a failure. On consideration of failure report submitted by the Conciliation Officer, the appropriate Government referred the dispute to Central Government Industrial Tribunal No. II, New Delhi, for adjudication, vide order No. L-12012/5/2007-IP(B-II), New Delhi, dated 06.07.2007 with following terms:

"Whether the action of the management of Punjab National Bank in dismissing the service of Shri Sushil Kumar Kashyap, Clerk/Cashier, Kiratpur branch of the bank with effect from 29.11.2004 on the basis of alleged charges of misconduct levelled against him vide charge sheet No.DAC:CASH:SP dated 31.07.2003 is legal, fair and justified? If not, to what relief the concerned workman is entitled?"

5. Vide Corrigendum No.L-12012/5/2007-IR(B-II), New Delhi, dated 21.02.2008, the appropriate Government made amendment in the name of the disputant from Sushil Prasad Kashyap to Shri Sunil Prasad Kashyap.

6. Claim statement was filed by Shri Sunil Prasad Kashyap, stating that he joined service of the bank on 04.03.1991. He was placed under suspension on 18.09.2001, in connection with a fraud of Rs. 25,000.00. However, before suspending him, neither show cause notice was given nor his explanation sought. The drafts were prepared by the claimant as per vouchers given to him through proper channel after depositing cash on that date. The Branch Manager, in order to save skin of his own men, placed him under suspension. He was served with a charge sheet on 31.07.2003, without supplying any documents. The Branch Manager withdrew Rs. 37,000.00 from his Savings Bank account and parked the same in Sundries account without informing him. Since Rs. 37,000.00 were recovered from him, there was no monetary loss to the bank. He was illegally harassed by the bank. Shri Anil Kumar Sharma was appointed as Enquiry Officer, who in violation of principles of natural justice and under pressure and influence of the bank, submitted his enquiry report on 30.07.2004, concluding therein that charges stood established against him. Report of the Enquiry Officer was not provided to

him. His services were terminated vide order dated 29.11.2004. His appeal against order of dismissal also came to be dismissed by the Appellate Authority on 28.03.2005, without application of mind. The claimant pleads that he may be reinstated in service with continuity and full back wages.

7. Demurral was made by the bank pleading that the departmental action taken against the claimant was in accordance with provisions of the Bipartite Settlement. He was placed under suspension on 18.09.2001 and subsequently served with charge sheet dated 31.07.2003, relating to commission of fraud of Rs.65,000.00 in the books of the bank. He failed to submit written statement of defence to the charge sheet, in spite of grant of reasonable opportunity. Enquiry Officer was appointed vide order dated 17.10.2003. The claimant attended the enquiry alongwith his defence representative. He cross examined the witnesses examined by the bank, during the course of enquiry proceedings. Defence documents and witnesses were produced during the enquiry. Copy of the report of the Enquiry Officer was sent to the claimant, who submitted his reply to his findings. On consideration of findings of the Enquiry Officer and submissions of the claimant, show cause notice was issued on 25.10.2004, giving him an opportunity of a personal hearing before the Disciplinary Authority on 06.11.2004, which was postponed to 17.11.2004 on the request of the claimant. After taking into account entire facts of the case, including submissions made by the claimant during personal hearing, punishment of dismissal without notice was confirmed. Appeal preferred by the claimant came to be dismissed. The punishment awarded to the claimant is just and legal. He is not entitled to any relief, muchless the relief of reinstatement with back wages, pleads the bank.

8. Vide order No. Z-22019/6/2007-IR(C-II), New Delhi dated 30.03.2011, the case was transferred to this Tribunal for adjudication by the appropriate Government.

9. On pleadings of the parties, following issues were settled:

- (1) Whether the enquiry conducted by the bank is fair, just and legal?
- (2) Whether punishment awarded to the claimant commensurate to his misconduct?
- (3) As in terms of reference.
- (4) Relief.

10. On appreciation of facts testified by the claimant and those detailed by Shri Anil Kumar, besides submissions made by the parties, issue No.1 was answered in favour of the claimant and against the bank, vide order dated 30.04.2012.

11. To prove misconduct of the claimant, Shri H.S. Kohli, Senior Manager and Shri G.S. Gupta, Chief Manager

were brought in the witness box by the bank. Claimant examined himself and Shri Inderpal Singh in rebuttal. No other witness was examined by either of the parties.

12. Arguments were advanced at the bar. Shri D.N. Mishra, authorised representative, advanced arguments on behalf of the claimant. Shri Rajat Arora, authorised representative, presented facts on behalf of the bank. Written submissions were also filed on behalf of the claimant. I have given my careful consideration to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:-

## Issue No. 2

13. In order to judge as to whether misconduct of the claimant stood established or not, it is expedient to note charges served upon him, besides evidence adduced by the parties. Charge sheet proved as Ex. MW1/117 highlights misconduct committed by the claimant, while working as Clerk/Cashier at Kiratpur branch of the bank from 05.03.1991, in the following terms:

“On 10.04.1997, one Shri Krishan Kumar deposited in the branch Rs.40,080.00 and Rs.40080.00 on two draft vouchers for issuance of two drafts for Rs.40,000.00 and Rs.40,000.00, both favouring Shri Piyush Kumar payable at BO : Kashipur.

The Head Cashier received the case and released both the vouchers under his signatures and duly entered in cashier's long book at Serial No.8 & 9.

You entered both the vouchers in draft cash book at Serial No.8 and 9, but instead of entering station of both the drafts as Kashipur, you with malafide intention entered station of draft at Sl. No.8 as Allahabad.

You prepared two drafts on printed draft Nos.RFA 046961 and RFA 046962 for Rs.40,000.00 and Rs.40,000.00 each favouring Shri Piyush Kumar payable at BO : Kashipur (Branch Serial No. 65/97 and 66/97). Both the drafts were later on paid by BO:Kashipur to the payee on 21.04.1997.

On the same day, i.e. 10.04.1997, you destroyed one of the above draft vouchers on which draft bearing branch Sl. No.65/97 was issued by replacing with another voucher of same amount, i.e. Rs.40,000.00 for issuance of draft for Rs.40,000.00 on BO:Chowk, Allahabad favouring Shri Ashish Kumar, your brother in law.

You prepared draft for Rs.40,000.00 favouring Shri Ashish Kumar payable at BO:Chowk Allahabad bearing printed No.RFA 046974 (BO Sl.No.24/97) on the above fictitious cash voucher for Rs.40000.00

prepared by you wherein name of the applicant was mentioned as Sanjay Kumar, without any address.

The Day book, credit extract and security document In & Out register of 10.04.2007 were also written by you.

On 21.04.1997, you prepared a cash payment voucher for cancellation of the above said draft No. RFA 046974 (Branch Sl. No. 24/97) favouring Shri Ashish Kumar payable at Allahabad Chowk, showing cash payment to Shri Sanjay Kumar, a non-existing person and entered the same in Suspense Register.

On 02.02.1999, one Shri Vijay Kumar deposited cash of Rs. 25,075.00 in the branch on one draft voucher for issuance of draft of Rs. 25,000.00 favouring Shri Vipin Sharma payable at BO:GT Road, Ghaziabad.

You prepared draft on printed draft No. RRW 166894 (BO Sl.No. 18/99) for Rs. 25,000.00 favouring Shri Vipin Sharma payable at BO:GT Road, Ghaziabad. The captioned draft was later paid by BO:GT Road, Ghaziabad to the payee.

On the same day, i.e. 02.02.1999, you destroyed the above draft voucher and replaced it with another voucher for same amount, i.e. Rs. 25,075.00 for issuance of draft on Allahabad favouring Shri Anil Kumar.

The Day book and security document In & Out register of 02.02.2009 were also written by you.

You prepared draft for Rs. 25,000.00 favouring Shri Anil Kumar payable at BO:Chowk Allahabad bearing printed No. RRW 166888 (BO Sl.No. 8/99) on the above fictitious cash voucher for Rs. 25000.00 showing Sanjay Kumar as applicant without any address.

On 03.05.1999, you prepared a cash payment vouchers for cancellation of the said draft bearing No. RRW 166888 (Branch Sl. No. 8/99) for Rs. 25,000.00 on the strength of letter dated 03.05.1999 purporting to be from Sanjay Kumar but written in your own handwriting without ensuring address of the applicant on the application and misrepresenting the above fact, you prepared another draft for Rs. 25,000.00 bearing Printed Draft No. RRW 167824 (BO Sl.No.10/99) favouring Shri Ashish Kumar payable at BO:Chowk, Allahabad.

The respective vouchers for the transaction, i.e. transfer debit voucher to suspense account and transfer credit voucher for issuance of draft were also prepared by you besides posting the debit voucher in suspense register. The draft favouring Shri Ashish Kumar was paid in clearing by BO:Chowk, Allahabad on 17.06.1999 for credit of

account of Shri Ashish Kumar, your brother in law with Canara Bank, Mirzapur.

Thus you have allegedly committed fraud of Rs. 65,000.00 in the books of the bank by way of above irregularities which are prejudicial to the interest of the bank and amounts to gross misconduct in terms of Para 19.5(j) of the Bipartite Settlement dated 19.10.1966.”

14. To substantiate charges, referred above, Shri G.S. Gupta unfolds in his affidavit Ex. MW2/A, tendered as evidence, that on 10.04.1997 one Shri Krishan Kumar had deposited an amount of Rs. 40,080.00 each on two draft vouchers for issuance of two drafts of Rs. 40,000.00 each, both favouring Shri Piyush Kumar, payable at Kashipur branch of the bank. The Head Cashier of the bank received cash and released the vouchers under his signatures, after entering the same in cash long book at serial Nos. 8 and 9 of that date. Copy of cash receipt long book dated 10.04.1997 is Ex. MW2/1. Claimant entered those vouchers in draft cash book at serial Nos. 8 and 9. At the time of entering station of those two vouchers, he with malafide intention entered the station of draft voucher at serial No.8 as Allahabad. Copy of draft cash book is Ex. MW2/2. Thereafter, claimant prepared two drafts RFA 046961 and RFA 046962 for Rs.40,000.00 each favouring Shri Piyush Kumar payable at Kashipur. The above drafts were later on paid by Kashipur branch of the bank to Shri Piyush Kumar on 24.07.1997. Copies of drafts issued in favour of Shri Piyush Kumar are Ex.MW2/4 and Ex.MW2/5 (inadvertently the office has marked these two drafts as Ex.MW2/5 and Ex.MW2/6).

15. Copy of draft issue register is Ex. MW2/6 (inadvertently this document has been marked as Ex. MW2/7). Copy of cash receipt voucher of Rs.40,080.00 on the basis of which draft serial No. RFA 046962 was issued is Ex. MW2/8 (inadvertently this document has been marked as Ex. MW2/9). Witness unfolds that on the same date, claimant had destroyed one of the draft voucher on which draft bearing serial No.65/97 was issued and replaced it with another voucher for a sum of Rs. 40,080.00 for issuance of draft of Rs. 40,000.00 on BO : Chowk Allahabad favouring Shri Ashish Kumar, his brother-in-law.

16. Claimant prepared draft of Rs.40,000.00 bearing serial No. RFA 046974 favouring Shri Ashish Kumar payable at BO:Chowk Allahabad. Copy of fictitious voucher, on which draft serial No. RFA 046974 was issued, is Ex. MW2/9 (inadvertently this document has been marked as Ex. MW2/10). On Ex. MW2/10 name of the applicant was mentioned as Sanjay Kumar without any address. Copy of draft RFA 046974 for a sum of Rs. 40,000.00 payable at BO:Chowk Allahabad is Ex. MW2/10 (inadvertently this document has been marked as Ex. MW2/11). Copy of draft issue register is Ex. MW2/11 (inadvertently this document has been marked as Ex. MW2/12.)



17. Day Book, Credit Extract and Security Documents in and Out Register of 10.04.1997 were written by the claimant. Credit extract for Zonal Office is Ex. MW2/14, wherein one draft for a sum of Rs. 40,000.00 has been shown as issued payable at Kashipur whereas other draft has been issued for a sum of Rs. 40,000.00 payable at BO:Chowk Allahabad. On 21.04.1997, cash payment voucher for cancellation of draft No. RFA 046974 favouring Ashish Kumar payable at BO:Chowk Allahabad was prepared showing cash payment to one Shri Sanjay Kumar, a non-existent person. Claimant entered the said payment of Rs. 40,000.00 in favour of Shri Sanjay Kumar in suspense register. Copy of cash payment voucher dated 21.04.1997 debited to suspense head to the tune of Rs.40,000.00 is Ex. MW2/15 (inadvertently this document has been marked as Ex. MW2/18). Copy of suspense register, having entry of Rs. 40,000.00 is Ex. MW2/16 (inadvertently this document has been marked as Ex. MW2/19). Copy of draft No. RFA 046974 favouring Shri Ashish Kumar, cancelled on 21.04.1997 is Ex. MW2/17 (inadvertently this document has been marked as Ex. MW2/20). By above acts, claimant had committed fraud of Rs. 40,000.00 in books of the bank, caused loss to the bank and committed misconduct. Shri Ashish Kumar, his brother in law, was also a party to the fraud, committed by the claimant.

18. Shri H.S. Kohli unfolds in his affidavit Ex. MW3/A, tendered as evidence, that on 02.02.1999, one Shri Vijay Kumar deposited cash of Rs. 25,075.00 in the branch for issuance of draft for a sum of Rs. 25,000.00 favouring Shri Vipin Sharma, payable at BO:GT Road, Ghaziabad. Copy of cashier long book is Ex. MW3/1. Copy of draft cash book is Ex. MW3/2. Claimant prepared draft No. RRW 166894 for a sum of Rs.25,000.00 favouring Shri Vipin Sharma payable at GT Road, Ghaziabad, copy of which is Ex. MW3/3 (inadvertently this document has been marked as Ex. MW3/9). Copy of draft issue register, payable at Ghaziabad has been annexed as Ex. MW3/5. The said draft was paid at BO:GT Road, Ghaziabad to the payee. Witness declares that on 02.02.1999, claimant destroyed above draft voucher and replaced it with another draft voucher for an amount of Rs. 25,075.00 for issuance of draft favouring Shri Anil Kumar payable at Allahabad. Copy of the said draft voucher is Ex. MW3/6. Copy of draft issue register payable at BO:Chowk Allahabad is Ex. MW3/7. Copy of draft voucher is Ex. MW3/8. Copy of draft No. RRW 166888 issued for a sum Rs. 25,000.00 favouring Shri Anil Kumar is Ex. MW3/10. Copy of credit extract is Ex. MW3/11. Day Book and Security Documents In and Out Register of 02.02.1999 were written by the claimant. Claimant prepared draft No. RRW 166888 on above fictitious cash voucher for Rs. 25,075.00, showing one Shri Sanjay Kumar as applicant. On 03.05.1999, claimant prepared another voucher for cancellation of draft No. RRW 166888 for a sum of Rs. 25,000.00 on a letter purported to have been written by Shri Sanjay Kumar. Copy of debit transfer

voucher for Rs. 25,000.00 dated 03.05.1999 in suspense account is proved as Ex. MW3/15. Copy of the said letter is Ex. MW3/17, which was written by the claimant in his own hand. Copy of cancelled draft No. RRW 166888 is Ex. MW3/16. Copy of suspense register is Ex. MW3/18. Copy of credit extract is Ex. MW3/19. Misrepresenting above facts, he prepared another draft for Rs.25,000.00 bearing No. RRW 167824 favouring Shri Ashish Kumar payable at BO : Chowk Allahabad. Draft favouring Shri Ashish Kumar was paid in clearing by BO:Chowk Allahabad on 17.06.1999, for credit in account of Shri Ashish Kumar at Canara Bank, Mirzapur. Copy of voucher dated 03.05.1999 for payment of commission of Rs. 75.00 is Ex. MW3/12. Copy of transfer credit voucher dated 03.05.1999 for Rs. 25,000.00 is Ex. MW3/14. Thus, by above facts, the claimant had committed fraud of Rs. 25,000.00 in the books of the bank, caused loss to the bank and committed misconduct. His brother in law, Shri Ashish Kumar was also a party to the fraud, committed by the claimant.

19. In his affidavit Ex. WW1/B, the claimant admits that on 10.04.1997, 21.04.1997, 02.02.1999 and 03.05.1999, he was assigned duties relating to draft issue department, besides allied duties at Kiratpur branch of the bank. In discharge of duties in normal course of business, he performed clerical job in bonafide manner. On 02.02.1999, he prepared draft No. RRW 166894 for a sum of Rs. 25,000.00 favouring Shri Vipin Sharma, payable at GT Road, Ghaziabad branch of the bank. He prepared that draft on blank draft leaf supplied by the Officer Incharge on the strength of voucher cum draft application received, duly passed, stamped and authenticated for cash received in the cash department, by cash receipt clerk. On that date, he also prepared draft No. RRW 166888 for a sum of Rs. 25,000.00 favouring Shri Anil Kumar payable at Chowk, Allahabad on blank draft leaf given by the Officer Incharge on the strength of another voucher-cum-draft application form, duly passed and released from cash department bearing stamp and authentication of cash received by cash receipt clerk. These drafts were checked by the bank's Officer Incharge alongwith respective vouchers and duly signed as authorized signatory. He kept the draft with him and handed over the same to the purchaser. On 03.05.1999, he performed duties as clerk for cancellation of draft No. RRW 166888 for Rs. 25000.00 on the strength of letter dated 03.05.1999 presented by the purchaser and prepared another draft for Rs. 25,000.00 bearing No. RRW 167824 under supervision and authentication by respective Officer Incharge, in good faith in normal discharge of his duties.

20. The claimant details that on 10.4.1997, he prepared two drafts of Rs. 40,000.00 each bearing No.046961 and 046962 payable at Kashipur and another draft for a sum of Rs. 40,000.00 bearing No. 046924 payable at BO:Chowk, Allahabad on the strength of respective voucher-cum-application forms, received duly passed and



released from cash department bearing stamp and authentication of cash receipt by cash receipt clerk. All these drafts were prepared on draft leaves supplied by the Officer Incharge, which were duly checked and signed by the authorized officers. On 21.04.1997, he performed clerical duty for cancellation of draft No. 046974 on the strength of application form submitted for cancellation of that draft. The entire clerical duties were checked and supervised by the authorized officials and cash payment was made through cash department on the strength of vouchers passed by the bank officials. He committed no act of omission and commission of delinquency or negligence. He had not committed any fraud.

21. The claimant denied destruction of voucher dated 02.02.1999 and its replacement by another voucher for issuance of draft in favour of Shri Anil Kumar. He further denied that draft payable at BO:Chowk Allahabad was prepared by him on fictitious cash voucher. On 03.05.1999, he cancelled draft on genuine application for cancellation submitted by Shri Sanjay Kumar, purchaser of the draft. He disputed that Shri Ashish Kumar, having account with Canara Bank at Mirzapur is his brother in law. He also denied that he destroyed draft voucher bearing serial No. 65/97 or replaced it with any other voucher.

22. Out of facts unfolded by Shri G.S. Gupta it came to light that the claimant prepared draft bearing serial No. RFA 046974, proved as Ex. MW2/10 on the basis of fictitious voucher Ex. MW2/9. Draft Ex. MW2/10 was cancelled and cash payment voucher for cancellation was prepared on 21.4.97 favouring one Sanjay Kumar, a non-existent person. Cash payment voucher Ex. MW2/15 was debited to suspense head. Copy of suspense register, having an entry of Rs. 40,000.00, was proved by Shri Gupta as Ex. MW2/16. On this count the claimant presents that he prepared draft No. RFA 046974 on the strength of voucher cum application form duly passed and released from cash department bearing stamp and authentication of cash receipt by cash receipt clerk. He further claims that he processed cancellation of above draft on the strength of application for its cancellation, which act was duly checked and supervised by authorized official and cash payment was made through cash department on the voucher passed by concerned bank official. Thus it is obvious that rival claims are made about genuineness and authenticity of the above documents.

23. In order to assess as to whether voucher Ex. MW2/9 is fictitious or not assistance is taken out of proceedings Ex. MW1/20, recorded by the Enquiry Officer on 27.5.04. In these proceedings Shri G.S. Gupta was examined as a witness by the bank before the Enquiry Officer. Shri Gupta explains that Ex. MW2/9 (produced as MEX 20 before the Enquiry Officer) was filled in by the claimant. He further details that on the strength of this voucher a draft for a sum of Rs. 40,000 was issued in favour

of Shri Ashish Kumar. A commission of Rs. 80 was charged for preparation of that draft. He further explains that in head cashier long book two entries of drafts payable at Kashipur were recorded on 10.4.97. No entry in respect of draft payable at Allahabad was recorded in head cashier long book on 10.4.97. Voucher Ex. MW2/9 was not entered in head cashier long book. He concludes that this fact is sufficient to announce that the amount mentioned in voucher Ex. MW2/9 was not received by the cash clerk. He went on to detail that this voucher was prepared wrongly and draft issued against this voucher was an act of fraud. In an answer to a question put to him by the Enquiry Officer Shri Gupta explains that in head cashier long book two vouchers for issuance of drafts payable at Kashipur were entered while the claimant entered those vouchers in draft cash book at serial No. 8 & 9 and in doing so he entered station of draft voucher at serial No. 8 as Allahabad. He went on to unfold that the claimant prepared two drafts payable at Kashipur. Against fictitious voucher Ex. MW2/9, the claimant prepared a draft payable at Allahabad. Thus the claimant had prepared an additional draft, besides two drafts payable at Kashipur. During the course of cross examination of Shri Gupta before this Tribunal as well as before the Enquiry Officer, the claimant could not dispel these facts.

24. One may venture as to whether someone else, other than the claimant, was responsible for these fraudulent acts. For an answer to this proposition assistance is taken out of the proceedings Ex. MW1/13, recorded by the Enquiry Officer on 31.7.03. When these proceedings are scanned, it came to light that Shri V.P.S. Rawat was examined by the bank before the Enquiry Officer on that date. In a question put to Shri Rawat he explains that Ex. MW2/9 (produced as MEX 20 before the Enquiry Officer) bears his initial, initial of Shri Sanjeev Gautam and Shri G.S. Gupta. Shri Rawat was working as incharge of draft issue section on 10.4.97. He initialed this document in the capacity of incharge draft issue section, while Shri Gupta initialed it in the capacity of Branch Manager. When Shri Rawat was questioned about the ambiguity occurring in head cashier long book and draft cash book (wherein entry was recorded by the claimant showing stations as Allahabad and Kashipur for payment of the two drafts) he explained that in that regard the claimant had breached his confidence. Out of the facts projected by Shri Rawat it came to light that the witness explains that on account of confidence shown by him in the claimant he had not verified stations of the drafts in draft cash book and without examination of voucher Ex. MW2/9 he initiated it in confidence. It is obvious, out of these facts, that fictitious voucher Ex. MW2/9 was prepared by the claimant. It was initialed by Shri Rawat in confidence. When Ex. MW2/9 was initialed by Shri Rawat, incharge draft issue section, it was also initialed by Shri Gupta, the Branch Manager.

25. In his testimony, the claimant admits issuance of three drafts on 10.4.97, all for a sum of Rs. 40,000 each. Two drafts bearing No. RFA 046961 and RFA 046962 payable at Kashipur were prepared on the strength of voucher entered by the cash receipt clerk in head cashier long book at serial No.8 & 9, proved as Ex. MW2/1. Those drafts were sent to Kashipur for payment and copies of those drafts have been proved as Ex. MW2/4 and Ex. MW2/5. Later on these drafts were paid to Shri Pyuresh Kumar. These two drafts were issued against cash vouchers in respect of which cash was issued by the cash clerk.

26. Issuance of draft No.RFA 049174 on 10.4.97, favouring Shri Ashish Kumar payable at Chawk Allahabad branch of the bank, is also an admitted act of the claimant. The claimant presents that it was prepared on the strength of voucher-cum-application form duly passed and released from cash department bearing stamp and authentication of cash receipt by cash receipt clerk. This assertion of the claimant was proved to be wrong, when facts were unfolded in that regard by Shri J.S. Gupta. Shri Gupta could bring it to light that this draft was issued on the strength of fictitious vouchers Ex. MW2/9, which was filled in by the claimant in his own hand. To cover his misdeeds the claimant recorded stations of draft vouchers at serial no. 8 & 9 as that of Allahabad and Kashipur respectively. Shri Gupta brought it on record that no payment was made in respect of voucher Ex. MW2/9. This fictitious voucher was created by the claimant to replace the genuine voucher, which was entered at serial no.8 of head cashier long book. On 21.4.97 draft RFA 046974, copy of which is proved as Ex.MW2/10 was cancelled by the claimant after preparing cash payment voucher for cancellation. He entered the said payment in suspense register favouring one Sanjay Kumar, a non existant person. Copy of suspension register, proved as Ex. MW2/16, highlight that a sum of Rs. 40,000 was debited to suspense head. Thus he paved way for payment of Rs. 40,000 in favour of Sanjay Kumar, which amount was paid to a non-existent person. The bank had been able to establish that the claimant committed a fraud and put the bank to loss of Rs. 40,000.

27. Whether negligence shown by Shri Rawat amounts to a misconduct? For an answer to this proposition it would be in the fitness of things to construe the word "misconduct". The dictionary meaning of the word 'misconduct' is: "improper behaviour, intentional wrong doing or deliberate violation of a rule of standard of behaviour. "Misconduct is a transgression of some established and definite rule of action, where no discretion is left except what necessity may demand: it is violation of definite law, a forbidden act and differs from carelessness. It comprises of positive acts and not mere neglect or failure".

28. Under Indian Penal Code and other special and local laws some acts or omissions are offences for which a person can be punished by the sovereign power of the State. These offences or acts are considered to be prejudicial to the interest of the society in general and, therefore, they are prohibited by law. There are, however, various other organizations such as professional bodies, educational institutions, clubs, corporations etc. and any one who wants to be admitted to such bodies, by being member or otherwise, is also required to act under certain rules and remain subject to certain discipline. If he does anything in violation of rules, regulations, or any law inconsistent with his position as a member of that society, then he is liable to lose advantage and facilities of the association with that society or organization. Any such act is, therefore, generally called misconduct. Primary meaning of the word 'misconduct' is bad management, mis-management and malfeasance or culpable neglect of an official in regard to his office. Both in law and in ordinary parlance, the term misconduct usually implies an act done willfully with a wrong intention and as applied to professional acts, even though such acts are not inherently wrongful, it means also dereliction of or deviation from duty. Even assuming that a particular act is negligence and not misconduct, such a negligence which amounts to dereliction of or deviation from duty cannot be excused. See In re:-Mehboob Alikhan (AIR 1958 AP 116).

29. In N.M. Roshan Umar Karim and Co. (AIR 1936 Mad.508) following three different meaning of the word 'misconduct' were given:

- “(a) Misconduct is not established by proving even culpable negligence. It is something opposed to accident or negligence and is doing of something which the doer knows to be wrong or which he does recklessly not caring what the result would be.
- (b) Misconduct is distinguished from accident and is not far from negligence - not only gross and culpable negligence and involves that a person misconducts himself when it is wrong conduct on his part, in the existing circumstances to do or to fail or omit to do a particular thing or to persist in the act, failure or omission or acting with carelessness. It is incorrect that a misconduct only refers to acts of gross or culpable negligence and not mere negligence.
- (c) Misconduct does not ordinarily covers acts of negligence. The test of misconduct is not what a reasonable man would have done in the circumstances. It means that servant is guilty of something which was inconsistent with the conduct expected of him by the rules of the company”.

Above three meanings were quoted by the Apex Court with approval in *Shiv Nath* (AIR 1965 SC 1666).

30. Whether mere negligence is a misconduct or not will depend upon the nature of negligence and the requirement of care which the employee was obliged to use on the nature of services he was expected to perform. Misconduct could be of three kinds:

- (i) technical misconduct which leaves no trail of indiscipline,
- (ii) misconduct resulting in damage to the employer's property which might be compensated by forfeiture of gratuity or part thereof, and
- (iii) serious misconduct such as acts of violence against the management or other employee or riotous or disorderly behaviour in or near the place of employment, which though not directly causing damage, is conducive to grave indiscipline.

31. In *Ram Singh* (1992 Lab. IC 2391) the Apex Court observed that though the expression "misconduct" is "not capable of precise definition, its dereliction receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of duty. It may involve moral turpitude, it must be improper or wrong behaviour, unlawful behaviour, willful in character, forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgement, carelessness or negligence in performance of duty, the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve."

32. In industrial law, the word 'misconduct' has acquired a specific connotation. In *Shalimar Rope Works Ltd.* (1953 L.A.C. 584) the Labour Appellate Tribunal laid down the criteria for determination as to whether an act would be misconduct, viz. the act (i) is inconsistent with the fulfillment of the express or implied conditions of service, or (ii) is directly linked with the general relationship of employer and employee or (iii) has a direct connection with the contentment or comfort of the men at work, or (iv) has a material bearing, on the smooth and efficient working of the concern. If the answer to any of these criteria is in affirmative, the action in question would amount to an act of misconduct. In industrial law, there two kinds of misconduct, namely; (I) gross or major misconduct which justify punishment of dismissal or discharge, and (II) minor misconduct which do not justify punishment of dismissal or discharge but may call for lesser punishment. See also *Caltex India Ltd.* (1966 (2) LLJ 137).

33. As testified by Shri Rawat he relied the claimed and initialed Ex.MW2/9. As an incharge draft issue section, Shri Rawat was under an obligation to ascertain whether Ex.MW2/9 bears signature of cash receipt clerk in taken of the fact that a sum of Rs. 40,000, besides commission of Rs.80 was paid. This duty was not performed by Shri Rawat and he initialed Ex.MW2/9 in blind faith. He was supposed to glance at the document and ascertain factum of receipt of cash by cash clerk. Negligence of Shri Rawat in that regard is culpable and amounts to a misconduct. However for this negligence Shri Rawat was not proceeded against departmentally, since he had obtained voluntary retirement before incident of fraud came to light. On the date when domestic action was being initiated against the claimant, Shri Rawat was not in the service of the bank by then. Under these circumstances, the bank would not initiate any action against Shri Rawat for his lapses. Since the claimant and Shri Rawat were differently placed on the date when domestic action was being initiated against the former, it cannot be said to be a case of discrimination.

34. Shri G. S. Gupta initialed Ex.MW2/9 in the capacity of Branch Manager. By that time Ex.MW2/9 was initialed by Shri Rawat, incharge draft issue section. When this document reached hands of the Branch Manager, he found it already initialed by incharge draft issue section, as a taken of fact that he had examined and verified all contents of that document. Shri Gupta was justified in relying on Shri Rawat, who was second layer of officer supposed to have examined the document. Therefore negligence on the part of the Gupta, in personally not examining contents of Ex.MW2/9, does not amount to a misconduct. He was right in placing reliance on his subordinate and his omission does not partake character of culpability or misconduct.

35. As unfolded by Shri H.S.Kohli a sum of Rs. 25,075 was deposited by one Vijay Kumar on 02.02.99 for issuance of a draft for a sum of Rs. 25,000 favouring Shri Vipin Sharma payable at branch office G.T. Road, Ghaziabad. The claimant prepared that draft bearing No. RRW166894, copy of which has been proved as Ex. MW3/3. Issuance of this draft is admitted by the claimant, in his testimony, Shri Kohli further unfolds that draft voucher was destroyed and replaced by the claimant with draft voucher proved as Ex. MW3/6. It was recorded in draft issue register for a draft of Rs. 25000 payable at branch office Chawk Allahabad, copy of which has been proved as Ex. MW3/7. He prepared a draft bearing No. RRW166888 for a sum of Rs.25000 favouring Shri Anil Kumar, copy of which has been proved as Ex. MW3/10. Issuance of this draft is also not disputed by the claimant. However in head cashier long book draft voucher for this draft does not find any entry, which fact establishes that no payment was received by the bank in respect of that draft. The said

draft was prepared on fictitious cash voucher for Rs.25075 showing one Sanjay Kumar as applicant.

36. On 3.5.99 the claimant prepared voucher for conciliation of draft No.166888. Draft cancellation voucher was prepared by the claimant on the strength of letter Ex.MW3/7. Shri Kohli claims that this letter was written by the claimant in his own hands. The claimant could not dispel the fact that letter Ex.MW3/17 was in his hand. Thus it is evident that the claimant wrote Ex.MW3/17, purported it to have been written by one Sanjay Kumar. Misrepresenting these facts he prepared another draft for a sum of Rs.25000 bearing No.RRW 166894 favouring one Ashish Kumar. Later on the said draft was paid in clearing by branch office Chawk Allahabad on 17.6.99 for credit in the account of Shri Ashish Kumar at Canara Bank, Mirzapur. Shri Ashish Kumar is brother in law of the claimant. The bank had been able to establish that by this modus oprendi the claimant committed a fraud and caused loss to the bank to the tune of Rs.25000. The bank could establish that the claimant committed fraud and caused loss of a total sum of Rs. 65000.

37. What should be the appropriate punishment, which can be awarded to the claimant, is a proposition which would be addressed to by this Tribunal? Right of an employer to inflict punishment of discharge or dismissal is not unfettered. The punishment imposed must commensurate with gravity of the misconduct, proved against the delinquent workman. Prior to enactment of section 11-A of the Industrial Disputes Act, 1947 (in short the Act), it was not open to the industrial adjudicator to vary the order of punishment on finding that the order of dismissal was too severe and was not commiserative with the act of misconduct. In other words, the industrial adjudicator could not interfere with the punishment as it was not required to consider propriety or adequacy of punishment or whether it was excessive or too severe. Apex Court, in this connection, had, however, laid down in Bengal Bhatdee Coal Company (1963 (I) LLJ 291) that where order of punishment was shockingly disproportionate with the act of the misconduct which no reasonable employer would impose in like circumstances, that itself would lead to the inference of victimization or unfair labour practice which would vitiate order of dismissal or discharge. But by enacting the provisions of section 11-A of the Act, the Legislature has transferred the discretion of the employer, in imposing punishment, to the industrial adjudicator. It is now the satisfaction of the industrial adjudicator to finally decide the quantum of punishment for proved acts of misconduct, in cases of discharge or dismissal. If the Tribunal is satisfied that the order of discharge or dismissal is not justified in any circumstances on the facts of a case, it has the power not only to set aside order of punishment and direct reinstatement with back wages, but it has also the power

to impose certain conditions as it may deem fit and also to give relief to the workman, including award of lesser punishment in lieu of discharge or dismissal.

38. It is established law that imposing punishment for a proved act of misconduct is a matter for the punishing authority to decide and normally it should not be interfered with by the Industrial Tribunals. The Tribunal is not required to consider the propriety or adequacy of punishment. But where the punishment is shockingly disproportionate, regard being had to the particular conduct and past record, or is such as no reasonable employer would ever impose in like circumstance, the Tribunal may treat the imposition of such punishment as itself showing victimization or unfair labour practice. Law to this effect was laid by the Apex Court in Hind Construction and Engineering Company Ltd. (1965 (I) LLJ 462). Likewise in Management of the Federation of Indian Chambers of Commerce and Industry (1971 (II) LLJ 630) the Apex Court ruled that the employer made a mountain out of a mole hill and had blown a trivial matter into one involving loss of prestige and reputation and as such punishment of dismissal was held to be unwarranted. In Ram Kishan (1996 (I) LLJ 982) the delinquent employee was dismissed from service for using abusive language against a superior officer. On the facts and in the circumstances of the case, the Apex Court held that the punishment of dismissal was harsh and disproportionate to the gravity of the charge imputed to the delinquent. It was ruled therein, “when abusive language is used by anybody against a superior, it must be understood in the environment in which that person is situated and the circumstances surrounding the event that led to the use of abusive language. No straight-jacket formula could be evolved in adjudicating whether the abusive language in the given circumstances would warrant dismissal from service. Each case has to be considered on its own facts”.

39. In B.M.Patil (1996 (II) LLJ 536), Justice Mohan Kumar of Karnatka High Court observed that in exercise of discretion, the Disciplinary Authority should not act like a robot and justice should be moulded with humanism and understanding. It has to assess each case on its own merit and each set of fact should be decided with reference to the evidence recording the allegation, which should be basis of the decision. The past conduct of the worker may be a ground for assuming that he might have a propensity to commit the misconduct and to assess the quantum of punishment to be imposed. In that case a conductor of the bus was dismissed from service for causing revenue loss of 50p to the employer by irregular sale of tickets. It was held that the punishment was too harsh and disproportionate to the act of misconduct.

40. After insertion of section 11-A of the Act, the jurisdiction to interfere with the punishment is there with the Tribunal, who has to see whether punishment imposed



by the employer commensurate with the gravity of the act of misconduct. If it comes to the conclusion that the misconduct is proved, it may still hold that the punishment is not justified because misconduct alleged and proved is such as it does not warrant punishment of discharge or dismissal and where necessary, set aside the order of discharge or dismissal and direct reinstatement with or without any terms or conditions as it thinks fit or give any other relief, including the award of lesser punishment, in lieu of discharge or dismissal, as the circumstance of the case may warrant. Reference can be made to a precedent in *Sanatak Singh* (1984 Lab.I.C.817). The discretion to award punishment lesser than the punishment of discharge or dismissal has to be judiciously exercised and the Tribunal can interfere only when it is satisfied that the punishment imposed by the management is highly disproportionate to the decree of the guilt of the workman. Reference can be made to the precedent in *Kachraji Motiji Parmar* [1994 (II) LLJ 332]. Thus it is evident that the Tribunal has now jurisdiction and power of substituting its own measure of punishment in place of the managerial wisdom, once it is satisfied that the order of discharge or dismissal is not justified. On facts and in the circumstances of a case, section 11A of the Act specifically gives two folds powers to the Industrial Tribunal, first is virtually the power of appeal against findings of fact made by the Enquiry Officer in his report with regard to the adequacy of the evidence and the conclusion on facts and secondly of foremost importance, is the power of reappraisal of quantum of punishment.

41. In *Bharat Heavy Electricals Ltd.* [2005 (2) S.C.C. 481] the Apex Court was confronted with the proposition as to whether power available to the Industrial Tribunal under section 11-A of the Act are unlimited. The Court opined that “there is no such thing as unlimited jurisdiction vested with any judicial or quasi judicial forum and unfettered discretion is sworn enemy of the constitutional guarantee against discrimination. An unlimited jurisdiction leads to unreasonableness. No authority, be it administrative or judicial, has any power to exercise the discretion vested in it unless the same is based on justifiable grounds supported by acceptable materials and reasons thereof”. The Apex Court relied its judgement in *C.M.C. Hospital Employees Union* [1987 (4) S.C.C. 691] wherein it was held that “section 11-A cannot be considered as conferring an arbitrary power on the Industrial Tribunal or the Labour Court. The power under section 11-A of the Act has to be exercised judiciously and the Industrial Tribunal or Labour Court is expected to interfere with the decision of a management under section 11-A of the Act only when it is satisfied that the punishment imposed by the management is highly disproportionate to the degree of guilt of the workmen concerned. The Industrial Tribunal or Labour Court has to give reasons for its decision”. In

*Hombe Gowda Educational Trust* [2006 (1) S.C.C. 430] the Apex Court announced that the Tribunal would not normally interfere with the quantum of punishment imposed by the employer unless an appropriate case is made out therefore.

42. Power to set aside order of discharge or dismissal and grant relief of reinstatement or lesser punishment is not untrammelled power. This power has to be exercised only when Tribunal is satisfied that the order of discharge or dismissal was not justified. This satisfaction of the Tribunal is objective satisfaction and not subjective one. It involves application of the mind by the Tribunal to various circumstances like nature of delinquency committed by the workman, his past conduct, impact of delinquency on employer’s business, besides length of service rendered by him. Furthermore, the Tribunal has to consider whether the decision taken by the employer is just or not. Only after taking into consideration these aspects, the Tribunal can upset the punishment imposed by the employer. The quantum of punishment cannot be interfered with without recording specific findings on points referred above. No indulgence is to be granted to a person, who is guilty of grave misconduct like cheating, fraud, misappropriation of employers fund, theft of public property etc. A reference can be made to the precedent in *Bhagirath Mal Rainwa* [1995 (I) LLJ 960].

43. As noted above, the claimant prepared fictitious voucher on 10.04.1997, after destruction of voucher for a sum of Rs.40,080.00 for issuance of draft for an amount of Rs.40,000.00 in favour of Shri Piyush Kumar at BO Kashipur. While using that fictitious voucher, he issued draft No.RFA 046974 favouring Shri Ashish Kumar, payable at BO:Chowk Allahabad for a sum of Rs.40,000.00. On 21.04.1997, he prepared cash payment voucher for cancellation of draft No.RFA 046974 showing cash payment to one Shri Sanjay Kumar, a non-existent person. He entered the amount of Rs.40,000.00 in suspense register. He also prepared fictitious draft on 02.02.1999 for a sum of Rs.25,075.00 for issuance of draft for a sum of Rs.25,000.00 favouring Shri Anil Kumar, payable at BO:Chowk Allahabad, after destruction of draft voucher for issuance of a draft in favour of Shri Vijay Kumar. He prepared draft No.RRW 166888 on the basis of above fictitious cash voucher, showing Sankay Kumar as an applicant. On 03.05.1999, he prepared cash payment voucher for cancellation of draft No.RRW 166888 for Rs.25000.00, on the strength of letter dated 03.05.1999 purporting to be from one Shri Sanjay Kumar, which letter was written by the claimant in his own hand. On misrepresentation of those facts, he prepared another draft No.RRW 167824 for a sum of Rs.25,000.00 favouring Shri Ashish Kumar payable at BO:Chowk Allahabad, which was later on paid on 17.06.1999 for credit

to the account of Shri Ashish Kumar with Canara Bank, Mirzapur. Shri Ashish Kumar happened to be brother in law of the claimant. The above facts make it apparent that serious misconduct of fraud, preparation of false vouchers, preparation of application purported to have been written by Shri Sanjay Kumar, besides loss to the tune of Rs. 65,000.00 to the bank were committed by the claimant. Misconduct like cheating, fraud and misappropriation of employers funds are grave one, justifying punishment of dismissal from service. Taking into account impact of delinquency, besides past conduct of the claimant I am of the considered opinion that the punishment imposed on the claimant does not require any interference by the Tribunal.

44. Question for consideration comes as to whether punishment awarded to the claimant was shockingly disproportionate to his misconduct, justifying interference by this Tribunal? In *Firestone Tyre and Rubber Company of India (Pvt.) Ltd.* [1973 (1) S.C.C. 813], the Apex Court ruled that once misconduct is proved, the Tribunal had to sustain order of punishment unless it was harsh indicating victimization. It has been further laid therein that if a proper enquiry is conducted by an employer and a correct finding arrived at regarding the misconduct, the Tribunal, even though now empowered to differ from the conclusion arrived at by the management, will have to give very cogent reasons for not accepting the view of the employer. Again in *Divisional Controller K.S.R.T.C. (N.W.K.R.T.C)* [2005 (3) S.C.C. 254] it was laid that question of quantum of punishment would not be weighed on amount of money misappropriated but it should be based on loss of confidence, which is a primary factor to be taken into account. Once a person is found guilty of misappropriating his employer's fund, there is nothing wrong for the employer to lose confidence or faith in such a person, awarding punishment of dismissal.

45. Punishment of dismissal from service without notice commensurate to the misconduct committed by the claimant. It cannot be said that the punishment awarded to the claimant was shockingly disproportionate to his misconduct, justifying interference by the Tribunal. The punishment of dismissal without notice cannot be said to be harsh, indicating victimization. One who commits misconducts, like cheating and fraud loses confidence of his employer. Therefore, I am of the considered opinion that the claimant has miserably failed to project that punishment awarded to him is to be substituted by any other punishment. The issue is, therefore, answered in favour of the bank and against the claimant.

### Issue No. 3

46. No evidence worth name has been highlighted to show that the claimant has been victimized or bank had malafide intention or followed unfair labour practice.

Whether the penalty of compulsory retirement from service would relate back to the date of order of dismissal passed by the bank? For an answer, it is expedient to consider the precedents handed down by the Apex Court. In *Ranipur Colliery* [(1959) Supp. 2 SCR 719] the employer conducted a domestic enquiry though defective and passed an order of dismissal and moved the Tribunal for approval of that order. It was ruled therein that if the enquiry is not defective, the Tribunal has only to see whether there was a *prima facie* case for dismissal and whether the employer had come to the bonafide conclusion that the employee was guilty of misconduct. Thereafter on coming to that conclusion that the employer had bonafide come to the conclusion that the employee was guilty, that is, there was no unfair labour practice and no victimization, the Tribunal would grant the approval which would relate back to the date from which the employer had ordered the dismissal. If the enquiry is defective for any reason, the Tribunal would also have to consider for itself on the evidence adduced before it whether the dismissal was justified. However on coming to the conclusion on its own appraisal of evidence adduced before it that the dismissal was justified its approval of the order of dismissal made by the employer on defective enquiry would still relate back to the date when order was made.

47. In *Phulbari Tea Estate* [1960 (I) S.C.R. 32] the domestic enquiry held by the employer culminating in the order of dismissal was found to be invalid, being in gross violation of the rules of natural justice. Even before the Tribunal, the employer did not lead proper evidence to justify the order of dismissal and contended itself by merely producing the statement of certain witnesses recorded during the domestic enquiry and the workman had no opportunity to cross-examine the witnesses before the Tribunal. In the absence of any evidence before it, justifying the dismissal, the Tribunal set aside the order of dismissal and granted compensation in lieu of reinstatement, which order was upheld by the Apex Court. In that case question of relating back of the order of dismissal did not arise.

48. In *P.H. Kalyani* [1963 (1) LLJ 673] the employer dismissed the workman after holding a domestic enquiry into the charges. Since some dispute was pending before the Industrial Tribunal, the employer applied for "approval" of action of dismissal in compliance with the proviso to section 33(2)(b) of the Act. The workman made an application under section 33-A of the Act. Apart from relying on validity of domestic enquiry, the employer adduced all the evidence before the Tribunal in support of its action. On basis of evidence before it, the Tribunal came to the conclusion that the facts of misconduct committed by the workman were of serious nature involving danger to human life and therefore dismissed the application under section 33-A and accorded

“approval” to the action of dismissal taken by the employer. In this situation the Apex Court held that if the enquiry is not defective and the action of the employer is bonafide, the Tribunal will grant the approval and the dismissal would “relate back to the date from which the employer had ordered dismissal”. If the enquiry is invalid for any reason, the Tribunal will have to consider for itself on the evidence adduced before it, whether the dismissal was justified. If it comes to the conclusion on its own appraisal of such evidence that the dismissal was justified, the dismissal would “still relate back to the date when the order was made”. *Sasa Musa Sugar Works case* (supra) was distinguished saying that observations made therein “apply only to a case where the employer had neither dismissed the employee nor had come to the conclusion that a case for dismissal had been made. In that case, the dismissal of the employee takes effect from the date of the award and so until then the relation of employer and employee will continue in law and in fact”.

49. *D.C. Roy* [(1976) Lab. I.C. 1142] is the illustration where domestic enquiry held by the employer was found to be invalid being violative of principles of natural justice and the employer had justified the order of dismissal by leading evidence before the Labour Court, on appraisal of which the Labour Court found the order of dismissal justified. In appeal, the Apex Court upheld the award with the observation that “the ratio of *Kalyani’s case* (supra) would therefore, govern the case and the judgment of the Labour Court must relate back to the date on which the order of dismissal was passed”.

50. In *Gujrat Steel Tubes Ltd.* [1980 (1) LLJ 137] inverted image of the *D.C. Roy’s case* was presented by a majority of three judge bench wherein it was held that “where no enquiry has preceded punitive discharge, and the Tribunal for the first time upholds the punishment, this court in *D.C. Roy vs. Presiding Officer* (supra) has taken the view that full wages be paid until the date of the award. There cannot be any relation back of the date of dismissal when the management passed the void order”. Though the court ruled that law laid in *D.C. Roy* is correct yet it followed obiter instead of the decision. Observations of the Apex Court in above decision, bearing on the relate back rule, were faulted in *R.Thiruvirkolam* [1997 (1) SCC 9] on the ground that they “are not in the line with the decision in *Kalyani* which was binding or with *D.C. Roy* to which learned Judge Krishna Iyer J. was a party. It also does not match with the juristic principle discussed in *Wade*”. The view taken in *R.Thiruvirkolam* (supra) was affirmed in *Punjab Dairy Development Corporation Ltd.* [1997 (2) LLJ 1041].

51. In view of the catena of decisions, detailed above, it is clear that an employer can justify its action by leading evidence before the Tribunal. This equally applies to cases of total absence of enquiry and defective enquiry. A case of defective enquiry stands on the same footing as no enquiry. If no evidence is led or evidence adduced does not justify the dismissal by the employer, the Tribunal can order reinstatement or payment of compensation as it may think fit. But if it finds on the evidence adduced before it that the dismissal is justified, the doctrine of relate back is pressed into service to bridge the time gap between the rupture of the relationship of employer and employee and the finding of the Tribunal.

52. If the workman is to be paid wages upto the date of the award of the Tribunal, the Parliament has to enact so, declares the Delhi High Court in *Ranjit Singh Tomar* (ILR 1983 Delhi 802). Obviously the Act does not make any provision for the situation. Precedents in *Ghanshyam Das Shrivastava* [1973 (1) SCC 656], *Capt. M.Paul Anthony* [1999 (3) SCC 679] and *South Bengal State Transport Corporation* [2006 (2) SCC 584] nowhere deal with the controversy, hence are not discussed.

53. In view of the facts detailed above, punishment of dismissal from service without notice would relate back to the date of the order. Claimant could not bring it to light that the order of dismissal from service would be applicable from the date of the award and not from the date of the order. All these facts would project that punishment of dismissal without notice, awarded to the claimant, is legal, fair and justified. Claimant could not show any illegality in the order of dismissal passed by the bank against him. The issue is, therefore, answered in favour of the bank and against the claimant.

### Relief

54. In view of above discussion, I am of the considered opinion that the claimant is not a person on whom the bank can depend upon. Banking business is conducted on trust and confidence. When an employee is found not to be trust worthy, his retention in service may affect the business of the bank. Such an employee cannot be retained in service. Therefore punishment of dismissal is not to be interfeared with by this Tribunal. The claimant is not entitled to any relief not to talk of relief of reinstatement in service. His claim statement is liable to be dismissed. Accordingly it is concluded that the action of the bank in dismissing him from the service is legal and justified. Claim statement is brushed aside. An award is passed in favour of the bank and against the claimant. It be sent to appropriate Govt. for publication.

Date : 10.12.2013

Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 24 जनवरी, 2014

**का.आ. 491.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मध्य बिहार ग्रामीण बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, श्रम न्यायालय नं. 1, धनबाद के पंचाट संदर्भ संख्या 6/2013, 7/2013, 9/2013, 10/2013, 13/2013, 14/2013, 15/2013, 16/2013, 17/2013, 18/2013, 19/2013, 21/2013, 22/2013, 23/2013, 24/2013, 25/2013, 26/2013, 27/2013, 28/2013, के शुद्धिकरण पत्र को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-1-2014 को प्राप्त हुआ था।

[सं. एल-12011/08/2013-आई आर (बी-1),  
सं. एल-12011/09/2013-आई आर (बी-1),  
सं. एल-12011/12/2013-आई आर (बी-1),  
सं. एल-12011/10/2013-आई आर (बी-1),  
सं. एल-12011/20/2013-आई आर (बी-1),  
सं. एल-12011/18/2013-आई आर (बी-1),  
सं. एल-12011/26/2013-आई आर (बी-1),  
सं. एल-12011/27/2013-आई आर (बी-1),  
सं. एल-12011/24/2013-आई आर (बी-1),  
सं. एल-12011/25/2013-आई आर (बी-1),  
सं. एल-12011/23/2013-आई आर (बी-1),  
सं. एल-12011/44/2013-आई आर (बी-1),  
सं. एल-12011/45/2013-आई आर (बी-1),  
सं. एल-12011/46/2013-आई आर (बी-1),  
सं. एल-12011/47/2013-आई आर (बी-1),  
सं. एल-12011/48/2013-आई आर (बी-1),  
सं. एल-12011/49/2013-आई आर (बी-1),  
सं. एल-12011/50/2013-आई आर (बी-1),  
सं. एल-12011/51/2013-आई आर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 24th January, 2014

**S.O. 491.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Corrigendum Award Ref. No. 6/2013, 7/2013, 9/2013, 10/2013, 13/2013, 14/2013, 15/2013, 16/2013, 17/2013, 18/2013, 19/2013, 21/2013, 22/2013, 23/2013, 24/2013, 25/2013, 26/2013, 27/2013,

28/2013, of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the industrial Dispute between the management of Madhya Bihar Gramin Bank, and their workmen, received by the Central Government of 24-01-2014.

[No. L-12011/08/2013-IR(B-I),  
No. L-12011/09/2013-IR(B-I),  
No. L-12011/12/2013-IR(B-I),  
No. L-12011/10/2013-IR(B-I),  
No. L-12011/20/2013-IR(B-I),  
No. L-12011/18/2013-IR(B-I),  
No. L-12011/26/2013-IR(B-I),  
No. L-12011/27/2013-IR(B-I),  
No. L-12011/24/2013-IR(B-I),  
No. L-12011/25/2013-IR(B-I),  
No. L-12011/23/2013-IR(B-I),  
No. L-12011/44/2013-IR(B-I),  
No. L-12011/45/2013-IR(B-I),  
No. L-12011/46/2013-IR(B-I),  
No. L-12011/47/2013-IR(B-I),  
No. L-12011/48/2013-IR(B-I),  
No. L-12011/49/2013-IR(B-I),  
No. L-12011/50/2013-IR(B-I),  
No. L-12011/51/2013-IR(B-I)]

SUMATI SAKLANI, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

In the matter of reference U/s 10(1)(d)(2A) of I.D. Act,  
1947

**Reference Nos. 6/2013, 7/2013, 9/2013, 10/2013,  
13/2013, 14/2013, 15/2013, 16/2013, 17/2013,  
18/2013, 19/2013, 21/2013, 22/2013, 23/2013,  
24/2013, 25/2013, 26/2013, 27/2013, 28/2013**

#### PARTIES:

Employer in relation to the management of  
Madhya Bihar Gramin Bank, Patna

AND

Their workmen.

#### PRESENT:

Sri R. K.Saran, Presiding Officer



**APPEARANCES :**

For the Employers : None.

For the workman : Sri Arun Kumar Singh, Rep.

State: Bihar

Industry : Banking

Dated 11/11/ 2013

**AWARD**

The Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub -section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal :

Ref. No. 6/2013 [ Order No. L-12011/08/2013-IR (B-1) dated 17.5.2013]

**SCHEDULE**

“Whether the action of the management of Madhya Bihar Gramin Bank was justified in terminating the services of the workman who worked as part time sweeper in the branch of the bank for more than 13 years. If not what relief they are entitled for ?”

Ref. No. 7/2013 [Order No. L-120 11/09/2013-IR (B-1) dated 17.5.2013]

**SCHEDULE**

“ Whether the action of the management of Madhya Bihar Gramin Bank was justified in terminating the services of the workman who worked as part time sweeper in the branch of the bank for more than 13 years. If not what relief they are entitled for?”

Ref. No. 9/20 13 [ Order No. L-12011/1 2/2013-IR (B-1) dated 20.5.2013 ]

**SCHEDULE**

“Whether the action of the management of Madhya Bihar Gramin Bank was justified in terminating the services of the workman who worked as part time sweeper in the branch of the bank for more than 13 years. If not what relief they are entitled for ?”

Ref. No. 10/2013 [Order No. L-12011/10/2013-IR (B-1) dated 28.5.2013 ]

**SCHEDULE**

“ Whether the action of the management of Madhya Bihar Gramin Bank was justified in terminating the services of the workman who worked as part time sweeper in the branch of the bank for more than 13 years. If not what relief they are entitled for ?”

Ref. No. 13/20 13 [Order No. L-12011/20/2013- IR (B-1) dated 04.06.2013 ]

**SCHEDULE**

“ Whether the action of the management of Madhya Bihar Gramin Bank was justified in terminating the services of the workman who worked as part time sweeper in the branch of the bank for more than 13 years. If not what relief they are entitled for ?”

Ref. No. 14/2013 [Order No. L-12011/18/2013-IR (B-1) dated 04.06.2013 ]

**SCHEDULE**

“Whether the action of the management of Madhya Bihar Gramin Bank was justified in terminating the services of the workman who worked as part time sweeper in the branch of the bank for more than 13 years. If not what relief they are entitled for ?”

Ref. No. 15/2013 [Order No. L-12011/26/2013-IR (B-1) dated 17.6.2013]

**SCHEDULE**

“Whether the action of the management of Madhya Bihar Gramin Bank was justified in terminating the services of Sri Madan Mohan Ram (2) Sri Parmeshwar Prasad (3) Nagendra Kumar (4) Sri Deepak Kumar who worked as part time sweeper in the branch of the bank for more than 13 years. If not what relief they are entitled for ?”

Ref. No.16/2013 [Order No. L-12011/27/20 13-IR (B-1) dated 17.6.2013]

**SCHEDULE**

“Whether the action of the management of Madhya Bihar Gramin Bank was justified in terminating the services (1) Sri Ramesh Kumar Shukla (2) Sri Arun Kumar (3) Sri Ashok Kumar Mandal (4) Sri Santosh Tiwary (5) Sri Biraju Kumar who worked as part time sweeper in the branch of the bank for more than 13 years. If not what relief they are entitled for ?”

Ref. No. 17/2013 [Order No. L-12011/24/2013 IR (B-1) dated 17.6.2013]

**SCHEDULE**

“ Whether the action of the management of Madhya Bihar Gramin Bank was justified in terminating the services (1) Sri Mahabir Ram (2) Sri Manoj Kumar Sah (3) Sri Surendra Kumar (4) Sri Budhan Singh, who worked as part time sweeper in the branch of the bank for more than 13 years. If not what relief they are entitled for ?”

Ref. No.18/2013 [Order No. L-12011/25/2013-IR (B-1) dated 17.6.2013]

**SCHEDULE**

“ Whether the action of the management of Madhya Bihar Gramin Bank was justified in terminating the services of (1) Sri Pintu Kumar Singh (2) Sri Uday Kumar Singh (3) Sri Manajar Kumar (4) Sri Dilip Kumar Singh, who worked as part time sweeper in the branch of the bank for more than 13 years. If not what relief they are entitled for ?”

Ref. No.19/2013 [Order No. L-12011/23/2013-IR (B-1) dated 17.6.2013]

**SCHEDULE**

“ Whether the action of the management of Madhya Bihar Gramin Bank was justified in terminating the services of (1) Dilip Kumar (2) Sri Dharmendra Kumar (3) Sri Nagdesh Ram (4) Sri Vijay Thakur, who worked as part time sweeper in the branch of the bank for more than 13 years. If not what relief they are entitled for ?”

Ref. No. 21/2013 [Order No. L-12011/44/2013-IR (B-1) dated 19.7.2013]

**SCHEDULE**

“ Whether the action of the management of Madhya Bihar Gramin Bank was justified in terminating the services of the workman who worked as part time sweeper in the branch of the bank for more than 9 years. If not what relief they are entitled for ?”

Ref. No. 22/2013 [Order No. L-12011/45/2013-IR (B-1) dated 19.7.2013]

**SCHEDULE**

“ Whether the action of the management of Madhya Bihar Gramin Bank was justified in terminating the services of the workman who worked as part time sweeper in the branch of the bank for more than 10 years. If not what relief they are entitled for ?”

Ref. No. 23/2013 [Order No. L-12011/46/2013-IR (B-1) dated 19.7.2013]

**SCHEDULE**

“ Whether the action of the management of Madhya Bihar Gramin Bank was justified in terminating the services of the workman who worked as part time sweeper in the branch of the bank for more than 10 years. If not what relief they are entitled for ?”

Ref. No. 24/2013 [Order No. L-12011/47/2013-IR (B-1) dated 19.7.2013]

**SCHEDULE**

“ Whether the action of the management of Madhya Bihar Gramin Bank was justified in terminating the services of the workman who worked as part time

sweeper in the branch of the bank for more than 10 years. If not what relief they are entitled for ?”

Ref. No. 25/2013 [Order No. L-12011/48/2013-IR (B-1) dated 19.7.2013]

**SCHEDULE**

“ Whether the action of the management of Madhya Bihar Gramin Bank was justified in terminating the services of the workman who worked as part time sweeper in the branch of the bank for more than 10 years. If not what relief they are entitled for ?”

Ref. No. 26/2013 [Order No. L-12011/49/2013-IR (B-1) dated 19.7.2013]

**SCHEDULE**

“ Whether the action of the management of Madhya Bihar Gramin Bank was justified in terminating the services of the workman who worked as part time sweeper in the branch of the bank for more than 10 years. If not what relief they are entitled for ?”

Ref. No. 27/2013 [Order No. L-12011/50/2013-IR (B-1) dated 19.7.2013]

**SCHEDULE**

“ Whether the action of the management of Madhya Bihar Gramin Bank was justified in terminating the services of the workman who worked as part time sweeper in the branch of the bank for more than 10 years. If not what relief they are entitled for ?”

Ref. No. 28/2013 [Order No. L-12011/51/2013-IR (B-1) dated 19.7.2013]

**SCHEDULE**

“ Whether the action of the management of Madhya Bihar Gramin Bank was justified in terminating the services of the workman who worked as part time sweeper in the branch of the bank for more than 10 years. If not what relief they are entitled for ?”

2. After receipt of the reference. The Secretary of Sponsoring Union of all reference submitted that the same management and same workman's dispute is pending before the Industrial Tribunal, Patna for decision. Accordingly he prays to withdraw the reference pending before this Tribunal. This being the situation it is felt that presently there is no dispute between the parties. Hence no dispute award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 23 जनवरी, 2014

का.आ. 492.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एतद्वारा कमिश्नर म्युनिसिपल कारपोरेशन ऑफ दिल्ली के प्रबंधतंत्र के संबद्ध

नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, दिल्ली के पंचाट (संदर्भ संख्या 157/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-01-2014 को प्राप्त हुआ था।

[सं. एल-42012/57/2012-आई आर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 23rd January, 2014

**S.O. 492.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D No. 157/2012) of the Central Government Industrial Tribunal/ Labour Court No.1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Commissioner, Municipal Corporation of Delhi and their workmen, which was received by the Central Government on 18-01-2014.

[No.L-42012/57/2012-IR(DU)]

P. K. VENUGOPAL, Section Officer

#### ANNEXURE

**BEFORE DR. R.K.YADAV, PRESIDING OFFICER,  
CENTRAL GOVT. INDUSTRIAL TRIBUNAL NO. I,  
KARKARDOOMA COURTS COMPLEX : DELHI**

#### I.D. No. 157/2012

The General Secretary,  
Through Nagar Nigam Karamchari Sangh,  
Delhi Pradesh, P-2/624, Sultanpuri,  
Delhi. . . . . Workman

#### Versus

The Commissioner,  
Municipal Corporation of Delhi,  
Town Hall, Chandni Chowk,  
Delhi-110006. . . . . Management

#### AWARD

Shri Surender Kumar was working as Safai Karamchari on daily wage basis with Municipal Corporation of Delhi (in short the Corporation). He died in harness. Smt. Maya Devi, survived the deceased employee. She claimed for grant of family pension. Since the deceased, Shri Surender Kumar was a casual employee, the Corporation denied claim of family pension, put forward by Smt. Maya Devi, widow of the deceased employee. She approached the Nagar Nigam Karamchari Sangh (in short the union) for redressal of her grievances. Thus union raised a dispute before the Conciliation Officer. Since the Corporation contested the claim, conciliation proceedings ended into a failure. On consideration of failure report, so submitted by the Conciliation Officer, appropriate

Government referred the dispute to this Tribunal for adjudication vide order No. L-42012/57/2012-IR (DU) New Delhi dated 08-11-2012, with following terms :

“Whether the action of the management of Municipal Corporation of Delhi (MCD) for non-grant of family pension of Smt. Maya Devi, W/o Late Shri Surender Kumar, Safai with effect from 11.1.2007 onward is justified or not? If not, what relief the deceased's widow, Smt. Maya Devi is entitled to and from which date?”

2. In the reference order, the appropriate Government commanded the parties to the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions, so given, Smt. Maya Devi opted not to file her claim statement with the Tribunal.

3. Notice was sent to Smt. Maya Devi by registered post on 05.12.2012, calling upon her to file claim statement before the Tribunal on or before 02-01-2013. This notice was sent to her through the union, at P-2/624, Sultanpuri, Delhi, the address provided by the appropriate Government in order of reference. Neither the claimant nor the union responded to the notice, so sent.

4. Since none came forward on behalf of the claimant to file her claim statement, fresh notice was sent to her by registered post on 02.01.2013 calling upon her to file claim statement before the Tribunal on 29.01.2013. Notice was again transmitted to the claimant by registered post on 31.01.2013 asking her to file her claim statement on or before 20.02.2013. Lastly, notice dated 22.02.2013 was sent by registered post commanding the claimant to file her claim statement before the Tribunal on or before 22.03.2013. Neither the postal articles, referred above, were received back nor was it observed by the Tribunal that postal services remained affected in the period, referred above. Therefore, every presumption lies in favour of the fact that the above notices were served upon the claimant. Despite service of these notices, claimant opted to abstain away from the proceedings. No claim statement was filed on her behalf.

5. Since onus of the question referred for adjudication was there on the Corporation, it was called upon to file its response to the reference order. In its response to the reference order, the Corporation projects that the claim is not maintainable for want of espousal. The Corporation also claims that no notice of demand was served on it prior to raising of the dispute. The Corporation further pleads that dispute has not acquired character of an industrial dispute on account of delay and laches, since the dispute has been raised after lapse of about

5 years. Even otherwise, Shri Surender Kumar never worked with the Corporation as a regular employee and as such, the claimant is not entitled for any family pension after his death. It has been projected that the claim is liable to be dismissed.

6. Arguments were heard at the bar. None came forward on behalf of the claimant to advance arguments. Shri Umesh Gupta, authorized representative, raised submissions on behalf of the Corporation. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows :

7. Corporation contests the dispute on the count that the dispute has not acquired status of an industrial dispute for want of espousal by the union or considerable number of the workmen in its establishment. For an answer to this proposition, definition of the term 'industrial dispute' is to be construed. Section 2(k) of the Industrial Disputes Act, 1947 (in short the Act), defines the term 'industrial dispute', which definition is extracted thus :

"2(k) "Industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;"

8. The definition of "industrial dispute" referred above, can be divided into four parts, viz. (i) factum of dispute, (2) parties to the dispute, viz. (a) employers and employers, (b) employer and workmen, or (c) workmen and workmen, (3) subject matter of the dispute, which should be connected with (i) employment or non employment or (ii) terms of employment, or (iii) condition of labour of any person, and (4) it should relate to an "industry".

9. The definition of "industrial dispute" is worded in very wide terms and unless they are narrowed by the meaning given to word "workman" it would seem to include all "employers", all "employments" and all "workmen", whatever the nature or scope of the employment may be. Therefore, except in the case where there can be a dispute between the employers and employers and workmen and workmen, one of the parties to an industrial dispute must be an employee or a class of employees. The first point, therefore, to be noted, perhaps self evident, is that the phrase "employer and workmen", the plural may include singular on either side or any permutation of singular or plural, the masculine including the feminine. In order, therefore, to determine as to whether a controversy or difference or a dispute is an "an industrial dispute" or not, it must first be determined whether the workman concerned

or workmen sponsoring his cause satisfy the conditions of clause (s) of section 2 of the Act. The Corporation does not dispute status of the claimant, being a workman within the meaning of section 2(s) of the Act. .

10. The Apex Court put gloss on the definition of "industrial dispute" in *Dimakuchi Tea Estate* (1958 (1) LLJ 500) and ruled that the expression "any person" in clause (k) of section 2 of the Act must be read subject to such limitation and qualification as arise from the context, the two crucial limitations are (i) the dispute must be a real dispute between the parties to the dispute (as indicated in the first two parts of the definition clause) so as to be capable of settlement or adjudication by one party to the dispute giving necessary relief to other, and (2) the person regarding whom the dispute is raised must be one for whose employment non employment, terms of employment or conditions of labour, as case may be, the parties dispute for a direct or substantial interest. Where workman raised a dispute as against their employment, the person regarding whose employment, non employer, terms of employment or conditions of labour, the dispute is raised need not be strictly speaking "workman" within the meaning of the Act, but must be one in whose employment, non employment terms of employment, or conditions of labour the workmen as a class have a direct or substantial interest. The observations made by the Apex Court are to be extracted thus : ..

"We also agree with the expression "any person" is not eo extensive with any workman, particular or otherwise, equal with other, that the crucial test is one of community of interest and the person regarding whom the dispute is raised must be one in whose employment, non employment, terms of employment, conditions of labour, as the case may be) the parties to the dispute have a direct or substantial interest. Whether such direct or substantial interest has been established in a particular case will depend on its facts and circumstances."

11. In *Kyas Construction Company (Pvt) Ltd.* (1958 (2) LLJ 660), the Apex Court ruled that an industrial dispute need not be a dispute between the employer and his workman and that the definition of the expression "industrial dispute" is wide enough to cater a dispute raised by the employer's workman with regard to non employment of others, who may not be employed as workman at the relevant time. The Apex Court in *Bombay Union of Journalist* (1961 (11) LLJ 436) has observed that in each case in ascertaining whether an individual dispute has acquired the character of an industrial dispute, the test is whether at the date of reference, the dispute was taken up as submitted by the union of the workmen of the employer against whom, the dispute is raised by an



individual workman or by an appreciable number of workmen in order, therefore, to convert an individual dispute into an industrial dispute, it has to be established that it has been taken up by the union of employees of the establishment or by an appreciable number of the employees of the establishment. As far as union of the workmen of establishment itself is concerned, the problem of espousal by them generally presents little difficulty, since such workmen who are members of such unions generally have a continuity of interest with an individual employee who is one of their fellow workman. But difficulty arise when the cause of a workman, in a particular establishment is sponsored by a union which is not of the workmen of that establishment but is one of which membership is open to workmen of their establishment as well as in that industry. In such a case a union which has only microscopic number of the workmen as its member, cannot sponsor any dispute arising between the workmen and the management. A representative character of the union has to be gathered from the strength of the actual number of co-workers sponsoring the dispute. The mere fact that a substantial number of workmen of the establishment in which the concerned workman was employee were also members of the union would not constitute sponsorship. It must be shown that they were connected together and arrived at an understanding by a resolution or by other means and collectively submitted the dispute.

12. The expression “industrial disputes” has been construed by the Apex Court to include individual disputes, because of the scheme of the Act. In *Raghu Nath Gopal Patvardhan* (1957(1) LLJ 27) the Apex Court ruled as to what dispute can be called as an industrial dispute. It was laid thereon that (1) a dispute between the employer and a single workman cannot be an industrial dispute, (2) it cannot per-se be an industrial dispute but may become if it is taken up by a trade union or a number of workmen. In *Dharampal Prem Chand* (1965 (1) LLJ 668) it was commanded by the Apex Court that a dispute raised by a single workman cannot become an industrial dispute unless it is supported either by is union or in the absence of a union by substantial number of workmen. Same law was laid in the case of *Indian Express Newspaper (Pvt.) Limited* (1970 (1) LLJ 132). However in *Western India Match Company* (1970 (II) LLJ 256), the Apex Court referred the precedent in *Dimakuchi Tea Estate’s case* (1958 (1) LLJ 500) and ruled that a dispute relating to “any person becomes a dispute where the person in respect of whom it is raised is one in whose employment, non employment, terms of employment or conditions of labour, the parties, dispute for a direct or substantial interest”.

13. What a substantial or considerable number of workmen would be in a given case, depend on particular facts of the case. The fact that an “industrial dispute”, is

supported by other workmen will have to be established either in the form of a resolution of the union of which workman may be member or of the workmen themselves who support the dispute or in any other manner. From the mere fact that a general union, at whose instance an “industrial dispute” concerning an individual workman is referred for adjudication, has on its roll a few of the workmen of the establishment as its members, it cannot be inferred that the individual dispute has been converted into an “industrial dispute”. The Tribunal has therefore, to consider the question as to how many of the fellow workman actually espoused the cause of the concerned workman by participating in the particular resolution of the Union. In the absence of a such a determination by the Tribunal, it cannot be said that the individual dispute acquired the character of an industrial dispute and the Tribunal will not acquire jurisdiction to adjudicate upon the dispute. Nevertheless, in order to make a dispute an industrial dispute, it is not necessary that there should always be a resolution of substantial or appreciable number of workmen. What is necessary is that there should be some express or collective will of a substantial or an appreciable member of the workmen treating the cause of the individual workman as their own cause. Law to this effect was laid in *P. Somasundram* (1970 (1) LLJ 558).

14. It is not necessary that the sponsoring union is a registered trade union or a recognized trade union. Once it is shown that a body of substantial number of workmen either acting through a union’ or otherwise had sponsored the workman’s cause, it is sufficient to convert it into an industrial dispute. In *Pardeep Lamp Works* (1970 (1) LLJ 507) complaints relating to dispute of ten workmen were filed before the Conciliation Officer by the individual workmen themselves. But their case was subsequently taken up by a new union formed by a large number of co-workmen, if not a majority of them. Since this union was not registered or recognized, the workmen elected five representatives to prosecute the cases of ten dismissed workmen. Thus cases of the dismissed workmen were espoused by the new union, yet unregistered and unrecognized. The Apex Court held that the fact that these disputes were not taken up by a registered or recognized union does not mean that they were not “industrial dispute”.

15. It is not expedient that same union should remain incharge of that dispute till its adjudication. The dispute may be espoused by the workmen of an establishment, through a particular union for making such a dispute an “industrial dispute”, while the workman may be represented before the Tribunal for the purpose of section 36 of the Act by a member of executive or office bearer of altogether another union. The crux of the matter is that the dispute should be a dispute between the employer and his workmen. It is not necessary that the dispute must be

espoused or conducted only by a registered trade union. Even if a trade union ceases to be registered trade union during the continuance of the adjudication proceedings that would not affect the maintainability of the order of reference. Law to this effect was laid by the High Court of Orissa in *Gammon India Limited* (1974 (11) LLJ 34). For ascertaining as to whether an individual dispute has acquired character of an individual dispute, the test is whether on the date of the reference the dispute was taken up as supported by the union of the workmen of the employer against whom the dispute is raised by the individual workman or by an appreciable number of the workman. In other words, the validity of the reference of an industrial dispute must be judged on the facts as they stood on the date of the reference and not necessarily on the date when the cause occurs. Reference can be made to a precedent in *Western India Match Co. Ltd.* (1970 (11) LLJ 256).

16. Here in the case, not even an iota of facts are brought over the record to the effect that the union took up the cause of the claimant as their own. It is also not shown that the members of the union had shown their collective will in favour of the cause of the claimant. Thus it is evident that there is a complete vacuum of facts to the effect that the union espoused the cause of the claimant. Resultantly there is no material to conclude to the effect that the dispute acquired status of an industrial dispute. The reference is liable to be answered against the claimant on that score.

17. Corporation further contests the dispute on the count that no notice of demand was served on it prior to raising a dispute before the Conciliation Officer. This fact also remained uncontroverted. The object of the Act is to protect workman against victimization by the employer and ensure termination of industrial dispute in a peaceful manner. The Act, however, does not provide for any set of social and economic principles for adjustment of conflicting interests. Such norms have been evolved and devised by industrial adjudication, keeping in view the social and economic conditions, the needs of the workmen, the requirement of the industry, social justice, relative interests of the parties and common good. These norms have given rights to the industrial employees what may be called industrial rights, as such rights may not be available at common law. Disputes as to the conditions of employment can be resolved by resorting to a technique known as collective bargaining. This tool is resorted to between an employer or group of employers and a bonafide labour union. Policy behind this is to protect workmen as a class against unfair labour practices. What imparts to the dispute of a workman the character of an “industrial dispute” is that it affects the right of the workmen as a class.

18. An industrial dispute comes into existence when the employer and the workman are at variance and the

dispute/difference is connected with the employment or non-employment, terms of employment or with conditions of labour. In other words, dispute or difference arises when a demand is made by the workman on the employer and it is rejected by him and vice versa. In *Sindhu Resettlement Corporation Ltd.* (1968(1) LLJ 834), the Apex Court has held that mere demand, asking the appropriate Government to refer a dispute for adjudication, without being raised by the workmen with their employer, regarding such demand, cannot become an industrial dispute. Hence, an industrial dispute cannot be said to exist until and unless a demand is made by the workman or workmen on the employer and it has been rejected by him. In *Feeders Lloyd Corporation Pvt. Ltd.* (1970 Lab. I.C. 421), High Court of Delhi went a step ahead and held that “... demand by the workman must be raised first on the management and rejected by it, before an industrial dispute can be said to arise and exist and that the making of such a demand to the Conciliation Officer and its communication by him to the management, who rejected the demand, is not sufficient to constitute an industrial dispute.”

19. The above decision was followed by Orissa High Court in *Orissa Industries Pvt. Ltd.* (1976 Lab. I.C. 285) and Himachal Pradesh High Court in *Village Paper Pvt. Ltd.* (1993 Lab. I.C. 99). However, the Apex Court in *Bombay Union of Journalists* (1961 (2) LLJ 436) had ruled that an industrial dispute must be in existence or apprehended on the date of reference. If, therefore, a demand has been made by the workman and it has been rejected by the employer before the date of reference, whether direct or through the Conciliation Officer, it would constitute an industrial dispute. In *Shambhunath Goyal* (1978(1) LLJ 484), the Apex Court appreciated facts that the workman had not made a formal demand for his reinstatement in service. However, he had contested his dismissal before the Enquiry Officer and claimed reinstatement. Against the findings of the Enquiry Officer, he preferred an appeal to the Appellate Authority, claiming reinstatement on the ground that his dismissal was bad in law. Then again, he claimed reinstatement before the Conciliation Officer in the course of conciliation proceedings, which was contested by the employer. Appreciating all these facts, the Apex court inferred that there was impeccable evidence that the workman had persistently demanded reinstatement, rejection of which brought an industrial dispute into existence.

20. In *New Delhi Tailor Mazdoor Union* (1979 (39) FLT 195), High Court of Delhi noted that *Shambunath Goyal* had not overruled *Sindhu Resettlement Pvt. Ltd.* But it had distinguished it on facts. It was also pointed out that decision of three Judges bench in *Sindhu Resettlement Pvt. Ltd.* could not have been overruled by two Judge bench in *Shambunath Goyal*. The High Court concluded that decision in *Sindhu Resettlement Pvt. Ltd.*,

in case of any conflict between the two decisions, must prevail. The High Court held that making of the demand by the workman on the management was *sine qua non* for giving rise to an industrial dispute.

21. The High Court of Madras in *Management of Needle Industries* (1986(1) LLJ 405) has held that dispute or difference between management and the workman, automatically arises when the workman is dismissed from service. His dismissal *per se* creates a dispute or difference between the management and the workman. The Court further observed that “it is nowhere stipulated in the Act, particularly in section 2(k), that existence of the dispute as such is not enough but then there should be a demand by the workman on the management to give rise to an industrial dispute”. However, this decision appears to be inconsistent with the ratio of decision in *Bombay Union of Journalists* (supra) and *Sindhu Resettlement* (supra). No doubt, for existence of an industrial dispute, there should be a demand by the workman and refusal to grant it by the management. However, a demand should be raised, cannot be a legal notion of fixity and rigidity. Grievances of the workman and demand for its redressal must be communicated to the management. Means and mechanism of the communication adopted are not matters of much significance, so long as demand is that of the workman and it reaches the management. Reference can be made to the precedent in *Ram Krishna Mills Coimbatore Ltd.* (1984 (2) LLJ 259).

22. The Act nowhere contemplates that the industrial dispute can come into existence in any particular, specific or prescribed manner nor there is any particular or prescribed manner in which refusal should be communicated. For an industrial dispute to come into existence, written claim is not *sine qua non*. To read into the definition, requirement of written demand for bringing an industrial dispute into existence would tantamount to rewriting the section, announced the Apex Court in *Shambunath Goyal* (supra). In other words, oral demand and its rejection will as much bring into existence an industrial dispute, as written one. If facts and circumstances of the case show that the workman had been making a demand, which the management had been refusing to grant, it can be said that there was an industrial dispute between the parties.

23. Since the claimant had not come forward to project that demand notice was served on the Corporation, under these circumstances, stand taken by the Corporation is to be believed. The Corporation projects that no notice of demand was served on it, before industrial dispute was raised before the Conciliation Officer. Thus, it is emerging over the record that it has not been established that demand was raised on the Corporation, which was rejected by it and as such, dispute has not acquired status of an industrial dispute.

24. The Corporation further projects that a stale claim has been made, since it has been raised after a gap of 5 years. Section 10 (1) of the Act does not prescribe any period of limitation for making reference of the dispute for adjudication. The words ‘at any time’ used in sub-section (1) of section 10 of the Act, does not admit of any limitation in making an order of reference. Law of limitation, which might bar any Civil Court from giving remedy in respect of lawful rights, cannot be applied by Industrial Tribunals. However, policy of industrial adjudication is that stale claim should not be generally encouraged or allowed unless there is satisfactory explanation for delay. In *Shalimar Works Ltd.* (1959 (2) LLJ 26), the Apex Court pointed out that though there is no limitation prescribed in making reference of the dispute to Industrial Tribunal, even so, it is only reasonable that disputes should be referred as soon as possible after having arisen and on failure of conciliation proceedings. In *Western India Match Company* (1970 (2) LLJ 256) the Apex Court observed that in exercising its discretion, Government will take into account time which has lapsed between its earlier decision and the date when it decides to consider it in the interest of justice and industrial peace to make the reference for adjudication. Same view was taken in *Mahabir Jute Mills Ltd.* (1975 (2) LLJ 326). In *Gurmail Singh* (2000 (1) LLJ 1080) Industrial Adjudicator dismissed the reference on the ground that there was delay of 8 years in raising the dispute, which delay was condoned by the Apex Court and it was ordered that the workman would not be entitled to any back wages for the period of 8 years but would be entitled to 50% of wages from the date it raised the dispute till the date of his reinstatement. In *Prahalad Singh* (2000 (2) LLJ 1653), the Apex Court approved the award of the Tribunal in not granting any relief to the workman who preferred the claim after a period of 13 years without any reasonable or justifiable grounds. From above decisions, it can be said that the law relating to delay in raising or reference of dispute is bereft of any principles, which can be easily comprehended by the litigants.

25. Claimant raised the dispute in respect denial of family pension to her after death of the deceased workman, *Shri Surender Kumar*, which occurred on 11.11.2007. The dispute was raised by her in the year 2012. Thus, it is emerging over the record that the claimant had raised the dispute after a gap of 5 years. No explanation has been offered for this inordinate delay. It appears that there was no industrial dispute in existence or could be even aid to have been apprehended in the year 2012, when the appropriate Government applied its mind to the facts of the present controversy.

26. For claim of family pension, it was incumbent upon the claimant to establish that her husband was appointed with the Corporation against a sustentative post. As projected in response to the reference order, *Shri*

Surender Kumar was engaged as a safai karamchhari on daily wage basis. Shri Surender Kumar was not working on any substantive post, details the Corporation. A daily wagger Safai Karamchhari is not borne on the strength of the Corporation, where he was engaged intermittently in exigencies of service. Such casual employee would not render any service against any substantive post. Therefore, such casual employee would not render any service within the meaning of Central Civil Services (Pension) Rules, 1972. In view of these facts, widow of deceased, Shri Surender Kumar is not entitled to raise a claim for family pension. Resultantly, it is concluded that action of the Corporation in denying family pension to Smt. Maya Devi is found to be justified. Smt. Maya Devi is not entitled to any relief on factual proposition too.

27. The foregoing reasons make me to conclude that Smt. Maya Devi is not entitled to any family pension. Action of the Corporation in denying family pension to Smt. Maya Devi is found to be justified. No relief can be granted in favour of Smt. Maya Devi. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated : 20-01-2014

Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 23 जनवरी, 2014

**का.आ. 493.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कमिश्नर म्युनिसिपल कारपोरेशन ऑफ दिल्ली के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, दिल्ली के पंचाट (संदर्भ संख्या 163/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 18-01-2014 को प्राप्त हुआ था।

[ सं. एल-42012/42/2012-आई आर (डीयू) ]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 23rd January, 2014

**S.O. 493.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D No. 163/2012) of the Central Government Industrial Tribunal/ Labour Court No.1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Commissioner, Municipal Corporation of Delhi and their workmen, which was received by the Central Government on 18-01-2014.

[No. L-42012/42/2012-IR(DU)]

P. K. VENUGOPAL, Section Officer

## ANNEXURE

**BEFORE DR. R. K. YADAV, PRESIDING OFFICER,  
CENTRAL GOVT. INDUSTRIAL TRIBUNAL NO. I,  
KARKARDOOMA COURTS COMPLEX : DELHI**

**I.D. No. 163/2012**

The General Secretary,  
Municipal Employees Union,  
Aggarwal Bhawan, G.T. Road,  
Tis Hazari, Delhi-110054

... Workman

## Versus

The Commissioner,  
Municipal Corporation of Delhi,  
Town Hall, Chandni Chowk,  
Delhi-110006.

... Management

## AWARD

Claimants, namely, Shri Ashok, Mahender, Inder Singh, Krishan Kumar and Vineet Kumar joined as safai karamchhari on muster roll with Municipal Corporation of Delhi (in the Corporation) on 25.10.1997, while Shri Praveen Kumar joined on 01.01.1998. They worked with the Corporation as muster roll safai karamchhari since then. They be laboured under a belief that their services ought to have been regularized since the date of their initial engagement. They approached the Municipal Employees Union (in short the union) for redressal of their grievance. The union raised an industrial dispute before the Conciliation Officer. Since the Corporation contested the claim, conciliation proceedings ended into a failure. On consideration of failure report, submitted by the Conciliation Officer, the appropriate government referred the dispute to this Tribunal for adjudication, vide order- No.L-42012/42/2012/1R(DU) New Delhi dated 09.11.2012 with following terms :

“Whether the action of the management of Municipal Corporation of Delhi (MCD) in denying the regularization of services and payment of salary thereof to Shri Ashok, S/o late Shri Goverdhan and 05 others (total 06) working as daily wagger safai karamcharis from the date of appointment, i.e. 11.07.1997 showing against each workman named (when the management of MCD has already regularized the services of such daily wagger safai karamcharis where appointment/engaged upto 31.03.1996) is justified or not. If not, what relief the workman concerned are entitled to and from which date?”

2. Claim statement was filed on behalf of the aforesaid claimants pleading therein that they joined the services of the Corporation as safai karamchhari on muster roll since 11.07.1997. They were paid minimum wages as notified by the appropriate Government from time to time. Regular



employees of their category are being paid in proper pay scales, which is much higher than the minimum wages paid to them. The Corporation was supposed to regularize their services since the date of their initial engagement. Non-payment of wages equal to regular employees of their category is totally illegal, biased, unjust and malafide. They performed work of permanent and regular nature. Payment of less wages to them amounts to unfair labour practice. Action of the Corporation is violative of provisions of Article 14, 16 and 39 of the Constitution of India. It amounts to exploitation of labour. On completion of 90 days continuous service, they have acquired status of a permanent employee. They have been meted out with hostile discrimination. Notice of demand was sent to the Corporation on 21.06.2010. The Corporation had not replied the same. It has been claimed that they be held to be regularized on the post of safai karamchari from the date of their initial engagement or in the alternative as per policy of the Corporation and be paid entire difference of salary on the principle of equal pay for equal work.

3. Claim was demurred by the Corporation pleading that the dispute has not acquired status of an industrial dispute for want of espousal by a union or considerable number of workmen in its establishment. No notice of demand was served on the Corporation and the dispute has not acquired character of an industrial dispute on this count too. The Corporation has its own policy of regularization in a phased manner. Casual employees engaged for the period for 01.04.1994 to 31.03.1996 have already been regularized. No worker has been regularized from the date of their initial engagement as daily wager.

4. The Corporation projects that Shri Ashok Kumar, Shri Mahender, Krishan Kumar, Shri Vineet Kumar and Shri Inder Singh were engaged on 25.10.1997, while Shri Praveen Kumar was engaged on 01.01.1998. It has been disputed that they continuously served the Corporation since the dates of their engagement. Regular employees of the Corporation are governed by CCS Rules, while daily wagers are governed by Minimum Wages Act, 1948. Model Standing Orders are not applicable to employees of the Corporation. Claimants were never meted out with hostile discrimination. They are not entitled to pay equal to regular employees of the Corporation. Claim put forward is liable to be dismissed, being devoid of merits.

5. On pleadings of the parties, following issues were settled :

- (i) Whether dispute has not acquired status of an industrial dispute for want of espousal by the union or considerable number of workmen in the establishment of the management ?
- (ii) Whether the dispute has not acquired status of an industrial dispute for want to demand notice ?
- (iii) As in terms of reference.

6. Despite grant of four opportunities to the claimants, they opted not to adduce any evidence. When no evidence was adduced on behalf of the claimants, the Corporation also opted not to examine any witness. Thus, no evidence was adduced by either of the parties.

7. Arguments were heard at the bar. Shri Surender Bhardwaj, authorized representative, advanced arguments on behalf of the claimants. Shri Umesh Gupta, authorized representative, presented facts on behalf of the Corporation. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:

#### Issue No. 1 :

8. The Corporation argues that the dispute has not acquired status of an industrial dispute for want of espousal of the claim by the union or considerable number of the workmen in its establishment. For an answer to this proposition, definition of the term 'industrial dispute' is to be construed. Section 2(k) of the Industrial Disputes Act, 1947 (in short the Act), defines the term 'industrial dispute', which definition is extracted thus :

"2(k) "Industrial dispute" means any dispute or difference between employers and employees, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;"

9. The definition of "industrial dispute" referred above, can be divided into four parts, viz. (i) factum of dispute, (2) parties to the dispute, viz. (a) employers and employees, (b) employer and workmen, or (c) workmen and workmen, (3) subject matter of the dispute, which should be connected with (i) employment or non - employment, or (ii) terms of employment, or (iii) condition of labour of any person, and (4) it should relate to an "industry".

10. The definition of "industrial dispute" is worded in very wide terms and unless they are narrowed by the meaning given to word "workman" it would seem to include all "employers", all "employments" and all "workmen", whatever the nature or scope of the employment may be. Therefore, except in the case where there can be a dispute between the employers and employees and workmen and workmen, one of the parties to an industrial dispute must be an employee or a class of employees. The first point, therefore, to be noted, perhaps self evident, is that the phrase "employer and workmen", the plural may include singular on either side or any permutation of singular or plural, the masculine including the feminine. In order, therefore, to determine as to whether a controversy or difference or a dispute is an "an industrial dispute" or not,

it must first be determined whether the workman concerned or workmen sponsoring his cause satisfy the conditions of clause (s) of section 2 of the Act. Here in the case the Corporation does not dispute status of the claimant to be of a workman within the meaning of section 2(s) of the Act.

11. The Apex Court put gloss on the definition of “industrial dispute” in *Dimakuchi Tea Estate* [1958 (1) LLJ 500] and ruled that the expression “any person” in clause (k) of section 2 of the Act must be read subject to such limitation and qualification as arise from the context, the two crucial limitations are (1) the dispute must be a real dispute between the parties to the dispute (as indicated in the first two parts of the definition clause) so as to be capable of settlement or adjudication by one party to the dispute giving necessary relief to other, and (2) the person regarding whom the dispute is raised must be one for whose employment, non-employment, terms of employment or conditions of labour, as case may be, the parties dispute for a direct or substantial interest. Where workman raised a dispute as against their employment, the person regarding whose employment, non employer, terms of employment or conditions of labour, the dispute is raised need not be strictly speaking “workman” within the meaning of the Act, but must be one in whose employment, non-employment terms of employment, or conditions of labour the workmen as a class have a direct or substantial interest. The observations made by the Apex Court are to be extracted thus :

“We also agree with the expression “any person” is not co-extensive with any workman, particular or otherwise, equal with other, that the crucial test is one of community of interest and the person regarding whom the dispute is raised must be one in whose employment, non-employment, terms of employment, conditions of labour (as the case may be) the parties to the dispute have a direct or substantial interest. Whether such direct or substantial interest has been established in a particular case will depend on its facts and circumstances.”

12. In *Kyas Construction Company (Pvt ) Ltd.* [1958 (2) LLJ 660], the Apex Court ruled that an industrial dispute need not be a dispute between the employer and his workman and that the definition of the expression “industrial dispute” “is wide enough to cater a dispute raised by the employer’s workman with regard to non employment of others, who may not be employed as workman at the relevant time. The Apex Court in *Bombay Union of Journalist* [1961 (11) LLJ 436] has observed that in each case in ascertaining whether an individual dispute has acquired the character of an industrial dispute, the test is whether at the date of reference, the dispute was taken up as submitted by the union of the workmen of the

employer against whom, the dispute is raised by an individual workman or by an appreciable number of workmen. In order, therefore, to convert an individual dispute into an industrial dispute, it has to be established that it has been taken up by the union of employees of the establishment or by an appreciable number of the employees of the establishment. As far as union of the workmen of establishment itself is concerned, the problem of espousal by them generally presents little difficulty, since such workmen who are members of such unions generally have a continuity of interest with an individual employee who is one of their fellow workman. But difficulty arise when the cause of a workman, in a particular establishment is sponsored by a union which is not of the workmen of that establishment but is one of which membership is open to workmen of their establishment as well as in that industry. In such a case a union which has only microscopic number of the workmen as its member, cannot sponsor any dispute arising between the workmen and the management. A representative character of the union has to be gathered from the strength of the actual number of co-workers sponsoring the dispute. The mere fact that a substantial number of workmen of the establishment in which the concerned workman was employee were also members of the union would not constitute sponsorship. It must be shown that they were connected together and arrived at an understanding by a resolution or by other means and collectively submitted the dispute.

13. The expression “industrial disputes” has been construed by the Apex Court to include individual disputes, because of the scheme of the Act. In *Raghu Nath Gopal Patvardhan* [1957(1) LLJ 27] the Apex Court ruled as to what dispute can be called as an industrial dispute. It was laid thereon that (1) a dispute between the employer and a single workman cannot be an industrial dispute, (2) it cannot per-se be an industrial dispute but may become if it is taken up by a trade union or a number of workmen. In *Dharampal Prem Chand* [1965 (1) LLJ 668] it was commanded by the Apex Court that a dispute raised by a single workman cannot become an industrial dispute unless it is supported either by his union or in the absence of a union by substantial number of workmen. Same law was laid in the case of *Indian Express Newspaper (Pvt.) Limited* [1970 (1) LLJ 132]. However in *Western India Match Company* [1970 (11) LLJ 256], the Apex Court referred the precedent in *Dimakuchi Tea Estate’s* case [1958 (1) LLJ 500] and ruled that a dispute relating to “any person becomes a dispute where the person in respect of whom it is raised is one in whose employment, non-employment, terms of employment or conditions of labour, the parties, dispute for a direct or substantial interest”.

14. What a substantial or considerable number of workmen would be in a given case, depend on particular facts of the case. The fact that an “industrial dispute”, is

supported by other workmen will have to be established either in the form of a resolution of the union of which workman may be member or of the workmen themselves who support the dispute or in any other manner. From the mere fact that a general union, at whose instance an “industrial dispute” concerning an individual workman is referred for adjudication, has on its roll a few of the workmen of the establishment as its members, it cannot be inferred that the individual dispute has been converted into an “industrial dispute”. The Tribunal has therefore, to consider the question as to how many of the fellow workman actually espoused the cause of the concerned workman by participating in the particular resolution of the Union. In the absence of a such a determination by the Tribunal, it cannot be said that the individual dispute acquired the character of an industrial dispute and the Tribunal will not acquire jurisdiction to adjudicate upon the dispute. Nevertheless, in order to make a dispute an industrial dispute, it is not necessary that there should always be a resolution of substantial or appreciable number of workmen. What is necessary is that there should be some express or collective will of a substantial or an appreciable member of the workmen treating the cause of the individual workman as their own cause. Law to this effect was laid in *P. Somasundrameran* [1970 (1) LLJ 558].

15. It is not necessary that the sponsoring union is a registered trade union or a recognized trade union. Once it is shown that a body of substantial number of workmen either acting through a union or otherwise had sponsored the workman’s cause, it is sufficient to convert it into an industrial dispute. In *Pardeep Lamp Works* [1970 (1) LLJ 507] complaints relating to dispute of ten workmen were filed before the Conciliation Officer by the individual workmen themselves. But their case was subsequently taken up by a new union formed by a large number of co-workmen, if not a majority of them. Since this union was not registered or recognized, the workmen elected five representatives to prosecute the cases of ten dismissed workmen. Thus cases of the dismissed workmen were espoused by the new union, yet unregistered and unrecognized. The Apex Court held that the fact that these disputes were not taken up by a registered or recognized union does not mean that they were not “industrial dispute”.

16. It is not expedient that same union should remain incharge of that dispute till its adjudication. The dispute may be espoused by the workmen of an establishment, through a particular union for making such a dispute an “industrial dispute”, while the workman may be represented before the Tribunal for the purpose of section 36 of the Act by a member of executive or office bearer of altogether another union. The crux of the matter is that the dispute should be a dispute between the employer and his workmen. It is not necessary that the dispute must be espoused or conducted only by a registered trade union.

Even if a trade union ceases to be registered trade union during the continuance of the adjudication proceedings that would not affect the maintainability of the order of reference. Law to this effect was laid by the High Court of Orissa in *Gammon India Limited* [1974 (11) LLJ 34]. For ascertaining as to whether an individual dispute has acquired character of an individual dispute, the test is whether on the date of the reference the dispute was taken up as supported by the union of the workmen of the employer against whom the dispute is raised by the individual workman or by an appreciable number of the workman. In other words, the validity of the reference of an industrial dispute must be judged on the facts as they stood on the date of the reference and not necessarily on the date when the cause occurs. Reference can be made to a precedent in *Western India Match Co. Ltd.* [1970 (11) LLJ 256].

17. Here in the case, not even an iota of facts are brought over the record to the effect that the union took up the cause of the claimants as their own. It is also not shown that the members of the union had shown their collective will in favour of the cause of the claimants. Thus it is evident that there is a complete vacuum of facts to the effect that the union espoused the cause of the claimants. Resultantly there is no material to conclude to the effect that the dispute acquired status of an industrial dispute. The reference is liable to be answered against the claimants on that score. Issue is therefore answered in favour of the Corporation and against the claimants.

## Issue No. 2 :

18. The Corporation further contests the dispute on the count that no notice of demand was served on it prior to raising a dispute before the Conciliation Officer. These facts also remained uncontroverted. The object of the Act is to protect workman against victimization by the employer and ensure termination of industrial dispute in a peaceful manner. The Act, however, does not provide for any set of social and economic principles for adjustment of conflicting interests. Such norms have been evolved and devised by industrial adjudication, keeping in view the social and economic conditions, the needs of the workmen, the requirement of the industry, social justice, relative interests of the parties and common good. These norms have given rights to the industrial employees what may be called industrial rights, as such rights may not be available at common law. Disputes as to the conditions of employment can be resolved by resorting to a technique known as collective bargaining. This tool is resorted to between an employer or group of employers and a bonafide labour union. Policy behind this is to protect workmen as a class against unfair labour practices. What imparts to the dispute of a workman the character of an “industrial dispute” is that it affects the right of the workmen as a class.



19. An industrial dispute comes into existence when the employer and the workman are at variance and the dispute/difference is connected with the employment or non-employment, terms of employment or, with conditions of labour. In other words, dispute or difference arises when a demand is made by the workman on the employer and it is rejected by him and vice versa, In *Sindhu Resettlement Corporation Ltd.* [1968(1) LLJ 834], the Apex Court has held that mere demand, asking the appropriate Government to refer a dispute for adjudication, without being raised by the workmen with their employer, regarding such demand, cannot become an industrial dispute. Hence, an industrial dispute cannot be said to exist until and unless a demand is made by the workman or workmen on the employer and it has been rejected by him. In *Fedders Lloyd Corporation Pvt. Ltd.* (1970 Lab.I.C.421), High Court of Delhi went a step ahead and held that “... demand by the workman must be raised first on the management and rejected by it, before an industrial dispute can be said to arise and exist and that the making of such a demand to the Conciliation Officer and its communication by him to the management, who rejected the demand, is not sufficient to constitute an industrial dispute.”

20. The above decision was followed by Orissa High Court in *Orissa Industries Pvt. Ltd.* [1976 Lab. I.C. 285] and Himachal Pradesh High Court in *Village Paper Pvt. Ltd.* (1993 Lab. I.C. 99). However, the Apex Court in *Bombay Union of Journalists* [1961 (2) LLJ 436] had ruled that an industrial dispute must be in existence or apprehended on the date of reference. If, therefore, a demand has been made by the workman and it has been rejected by the employer before the date of reference, whether direct or through the Conciliation Officer, it would constitute an industrial dispute. In *Sharnbunath Goyal* [1978 (1) LLJ 484], the Apex Court appreciated facts that the workman had not made a formal demand for his reinstatement in service. However, he had contested his dismissal before the Enquiry Officer and claimed reinstatement. Against the findings of the Enquiry Officer, he preferred an appeal to the Appellate Authority, claiming reinstatement on the ground that his dismissal was bad in law. Then again, he claimed reinstatement before the Conciliation Officer in the course of conciliation proceedings, which was contested by the employer. Appreciating all these facts, the Apex court inferred that there was impeccable evidence that the workman had persistently demanded reinstatement, rejection of which brought an industrial dispute into existence.

21. In *New Delhi Tailor Mazdoor Union* [1979 (39) FLT 195], High Court of Delhi noted that *Shambunath Goyal* had not overruled *Sindhu Resettlement Pvt. Ltd.* But it had distinguished it on facts. It was also pointed out that decision of three Judges bench in *Sindhu Resettlement Pvt. Ltd.* could not have been overruled by two Judge bench in *Shambunath Goyal*. The High Court

concluded that decision in *Sindhu Resettlement Pvt. Ltd.*, in case of any conflict between the two decisions, must prevail. The High Court held that making of the demand by the workman on the management was sine qua non for giving rise to an industrial dispute.

22. The High Court of Madras in *Management of Needle Industries* [1986(1) LLJ 405] has held that dispute or difference between management and the workman, automatically arises when the workman is dismissed from service. His dismissal per se creates a dispute or difference between the management and the workman. The Court further observed that “it is nowhere stipulated in the Act, particular in section 2(k), that existence of the dispute as such is not enough but then there should be a demand by the workman on the management to give rise to an industrial dispute”. However, this decision appears to be inconsistent with the ratio of decision in *Bombay Union of Journalists* (supra) and *Sindhu Resettlement* (supra). No doubt, for existence of an industrial dispute, there should be a demand by the workman and refusal to grant it by the management. However, a demand should be raised, cannot be a legal notion of fixity and rigidity. Grievances of the workman and demand for its redressal must be communicated to the management. Means and mechanism of the communication adopted are not matters of much significance, so long as demand is that of the workman and it reaches the management. Reference can be made to the precedent in *Ram Krishna Mills Coimbatore Ltd.* [1984(2) LLJ 259].

23. The Act nowhere contemplates that the industrial dispute can come into existence in any particular, specific or prescribed manner nor there is any particular or prescribed manner in which refusal should be communicated. For an industrial dispute to come into existence, written claim is not sine qua non. To read into the definition, requirement of written demand for bringing an industrial dispute into existence would tantamount to rewriting the section, announced the Apex Court in *Shambunath Goyal* (supra). In other words, oral demand and its rejection will as much bring into existence an industrial dispute, as written one. If facts and circumstances of the case show that the workman had been making a demand, which the management had been refusing to grant, it can be said that there was an industrial dispute between the parties.

24. Since the claimants had not come forward to project that demand notice was served on the Corporation, under these circumstances, stand taken by the Corporation is to be believed. The Corporation projects that no notice of demand was served on it, before industrial dispute was raised before the Conciliation Officer. Thus, it is emerging over the record that it has not been established that demand was raised on the Corporation, which was rejected



by it and as such, dispute has not acquired status of an industrial dispute. Issue is, therefore, answered in favour of the Corporation and against the claimants.

**Issue No. 3 :**

25. Onus was there on the claimants to establish that they were engaged by the Corporation on 11.07.1997 and rendered continuous service since then. They were also supposed to establish that they were entitled to regularization of their service since the date of their initial engagement. It was also incumbent on them to prove that the Corporation has regularized services of daily wagers, who were engaged in 1997 and thereafter. Contra to it, the Corporation projects that the claimants were engaged on 25.10.1997, except Shri Praveen Kumar, who was engaged on 01.01.1998. Daily wagers engaged in the period from 01.04.1994 to 31.03.1996 have been regularized as per office order No. 1989/HC/ADC/DEMC/HQ/2009 dated 03.10.2008. Persons engaged thereafter are yet to be regularized as per policy of the Corporation. Thus it is evident that for want of evidence, claimants failed to establish that they were initially engaged since 11.07.1997 and entitled for regularization of their services since the date of their initial engagement, on factual matrix too.

26. Claimants agitates that they were taken on job as daily rated/muster roll and were paid minimum wages as fixed and revised from time to time under the Minimum Wages Act, while their counterparts doing identical work were paid much higher than the minimum wages. The Corporation cannot differentiate between the workers on the principles of equal pay for equal work. For an answer to this proposition, the Tribunal is required to take note of the constitutional rights available to the claimants. Equality before law and equal protection of laws are fundamental rights of every person, ordains Article 14 of the Constitution. The guiding principles laid in Article 14 are that persons, who are similarly situated, shall be treated alike both in privileges conferred and liability imposed, which means that amongst equals the law should be equal and should be equally administered and that like should be treated alike. Article 16 of the Constitution guarantees equality of opportunities for all citizens in matters relating to employment or appointment to any office under the State. What is guaranteed is the equality of opportunity. Like all other employers, government is also entitled to pick and choose from amongst a large number of candidates offering themselves for employment. But the selection process must not be arbitrary. The guarantee given by clause (a) of Article 16 of the Constitution will cover (a) initial appointments (b) promotions (c) termination of employment (d) and matters relating to salary, periodical increments, leaves, gratuity, pension, age of superannuation etc. Matters relating to employment or appointments include all matters in relations to employment both prior and subsequent to the employment which are

incidental to the employment and form part of the terms and conditions of such employment.

27. Fundamental rights guaranteed by Article 14 forbids class legislation, but does not forbid classification or differentiation which rests upon reasonable ground of discretion. Classification is the recognition of the relations, and in making it the Government must be allowed a wide latitude of discretion and judgment. In a way, the consequences of such classification would undoubtedly be to differentiate persons belonging to that class from others. The classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and the differentia must have a rational relation to the object sought to be achieved. Classification may be made according to the nature of persons, nature of business, and may be based with reference to time.

28. Concept of equality guaranteed by Article 16 of the Constitution is something more than formal equality and enables the underprivileged groups to have a fair share by having more than equal chance and enables the State to give favoured treatment to those groups by achieving real equality with reference to social needs. 'Protection discrimination' enabled the State to adopt new strategy to bring underprivileged at par with the rest of the society, by providing all possible opportunities and incentives to them. Therefore a class may be allowed to have preferential treatment in the matter relating to employment or appointment. There cannot be rule of equality between members of separate and independent group of persons. Persons can be classified in different groups, based on in terms of nature of persons, nature of business and with reference to time. Therefore classification based on nature of business for which sweepers were employed by the management, has a reasonable differentia.

29. Now it would be considered as to whether the claimants are entitled for wages for the post of beldar equal to regular employees of their category. Doctrine of "equal pay for equal work" has been enshrined under Article 39(d) of the Constitution as one of the directive principles of the State policy, requiring the State to secure "equal pay for equal work" for both, men and Women. This constitutional goal is capable of attainment through constitutional remedies by way of enforcement of constitutional rights, declares the Supreme Court in *Randhir Singh* [1982 (I) LLJ 344]. In *G. Sreenivasa Rao* [1989 (11) LLJ 149], the Apex Court announced that right to "equal pay for equal work" is an accompaniment of the equality clause enshrined in Article 14 and 16 of the Constitution of India. Nevertheless, abstract doctrine of "equal pay for equal work" cannot be read in Article 14. Reasonable classification, based on intelligible criteria having nexus with the object sought to be achieved, is permissible.

30. In *Grih Kalyak Kendra Workers Union* [1991 (1) LLJ 349] Apex Court had gone to the extent of saying that “equal pay for equal work” has assumed the status of fundamental right in service jurisprudence having regard to the constitutional mandate of equality in Articles 14 and 16 of the Constitution. It was pronounced therein that it has ceased to be a judge made law as it is the part of the constitutional philosophy which ensures a welfare socialistic pattern of State providing equal opportunity to all and equal pay for equal work for similarly placed employees of the State. The principles does not apply to the State only but also applies to the State instrumentalities.

31. In 1976, Equal Remuneration Act 1976 was enacted to implement provisions of Article 39(d) of the Constitution. Construing provisions of that Act, Supreme Court in *Audrey D’Costa* [1987(1) LLJ 536] pronounced that the Act does not permit the management to pay to a section of its employees, doing the same work or work similar in nature, lower pay contrary to the provisions of section 4(1) of the Act only because it is not able to pay equal remuneration to all. The Court further observed that the applicability of the Act does not depend upon the financial ability of the management to pay equal remuneration as provided by it.

32. In deciding whether the work is the same or is broadly the same, the Authority should take a broad view and also adopt a broad approach in ascertaining whether any differences are of practical importance because from the subject of ‘similar work’ implies difference in detail. Actual duties performed should be looked into and not those that are theoretically possible. Elaborating the concept of “equal pay for equal work” and its application, the Apex Court in *Randhir Singh* (Supra) observes as follows :

“Where all things are equal that is, where all relevant considerations are the same, persons holding identical posts’ may not be treated differentially in the matter of their pay merely because they belong to different departments. Of course, if officers of the same rank perform dissimilar functions and the powers, duties and responsibilities of the posts held by them vary, such officers may not be heard to complain of dissimilar pay merely because the posts are of the same rank and the nomenclature is the same \*\*\* and there are different grades in a service, with varying qualifications for entry into a particular grade, the higher grade often being a promotional avenue for officers of the lower grade. The higher qualification for higher grade, which may be either academic qualification or experience based on length of service, reasonably sustain the classification of the officers into two grades with different scales of pay. The principle of “equal pay for equal work”

would be an abstract doctrine not attracting Article 14 if sought to be applied to them”.

33. In *Delhi Veterinary Association* (AIR 1984 SC 1221), the Supreme Court ruled that apart from the nature of work, the pay structure should reflect many other values and observed that the employer should follow certain basic principles in fixing the pay scales of various posts and cadres in the Government service. The degree of skill, strain of work, experience involved, training required, responsibility undertaken, mental and physical requirements, disagreeableness of the task, hazard attendant on work and fatigue involved are, according to the Third Pay Commission, some of the relevant factors which should be taken into consideration in fixing pay scales. The method of recruitment, the level at which the initial recruitment is made in the hierarchy of service or cadre, minimum educational and technical qualifications prescribed for the post, the nature of dealings with the public, avenues of promotion available and horizontal and vertical relativity with other jobs in the same service or outside are also relevant factors, announced the Court.

34. In *JP Chaurasia* [1989 (1) LLJ 309], the Apex Court, elaborating the same theme, ruled that apart from the nature of work or volume of the work done the other relevant factors to be taken into account, are ‘evaluation of duties and responsibilities of the respective posts’. In *Hari Narain Bhowal* [1995 (II) LLJ 328], the Apex Court pronounced that the principle of “equal pay for equal work” can be enforced when claiming persons satisfy the Court that not only the nature of work is identical but in all other respects they belong to the same class and there is no apparent reason to treat “equals as unequals”.

35. In *Ram Ashray Yadav* [1996 (II) LLJ 92], the Apex Court observed that principle of “equal pay for equal work” will not apply where qualification prescribed, mode of recruitment and the nature of duties are different for regular employees and a temporary employee. The claim of temporary Investigator cum Computer for payment of salary at par with the regular Investigator-cum-Computer was discarded by the Court in the said case. However classification of officers into two groups, namely, deputations and non-deputations, for paying different rates of special pay was held to be not permissible under Article 14 and 16 of the Constitution, as it did not bear any rational relation to the Objects of the classification. See *M.P. Singh* (A.I.R. 1987 S.C. 485).

36. In *Jasmer Singh*, [1996(11) SCC 77], the Apex Court made it clear that equal pay can be given for equal work of equal value. How work of two employees can be assessed to be of equal value was laid down by the Apex Court as follows:

“It is, therefore, claimed that quality of work performed by different sets of persons holding

different jobs will have to be evaluated. There may be differences in educational or technical qualifications which may have a bearing on the skills which the holders bring to their job although the designation of the job may be the same. There may also be other considerations which have relevance to efficiency in service which may justify differences in pay-scales on the basis of criteria such as experience and seniority, or a need to prevent stagnation in the cadre, so that good performance can be elicited from persons who have reached the top of the pay-scale. There may be various other similar considerations which may have a bearing on efficient performance in a job. This Court has repeatedly observed that evaluation of such jobs for the purposes of pay-scale must be left to expert bodies and, unless there are any malafides, its evaluation should be accepted”.

37. In case nature of work is the same, irrespective of educational” qualification, mode of appointment, experience and other relevant factors, principle of equal pay for equal work cannot apply, as held by the Apex Court in *Tarun K Roy* [2004 (1) SCC 347]. Whether members of the claimant Union can project his case for grant of pay for the post of enquiry clerk on the ground that he performed equal work as performed by the enquiry clerk/ clerks? Answer lies in the negative. At the cost of repetition, it is said that the work performed by the claimant and clerks, recruited by the management, had no nexus of equality. The Apex Court in *Surender Singh* [2007 (115) FLR 1003] had reviewed the law and laid that for grant of equal pay for equal work, it has to be shown that there is total and complete identity between two persons and only thereafter they can be granted equal pay for equal work. The law laid is reproduced thus :

“Principles of equal pay for equal work has undergone a sea change. Earlier view of this Court was that if two persons are discharging the same functions, they will be entitled to same wages. Subsequently, that view has been changed and now the view of this Court is that there should be complete and total identity between two persons, similarly situated so as to grant equal pay for equal work. Recently, this Court has held that identity between two persons is to be complete and total. In case of regular appointee, he has undertaken selection process and his services are regular. Even if a daily wager employee who is discharging the same function as a regular employee, the authorities are not bound to grant equal pay to such a person who is appointed on daily wage basis, i.e. he is appointed for a short term and has not faced the selection process. Thus the principle of equal pay

for equal work is to be granted only if there is total complete identity between the two persons. In this view, we are supported by decision of this Court in the case of *Shri S.C. Chandra and others vs. State of Jharkhand and others* [2007 (9) SCR 130], which is referred to in earlier decision of this court.”

38. In *Surjit Singh* [2009 (123) FLR 38] Apex Court was confronted with the proposition as to whether the persons employed as daily wagers in different capacities by Public Health Department of State of Punjab were entitled for “equal pay for equal work” to that of the employees who were appointed against regular posts, by following process of recruitment. It was ruled therein that grant of benefit of doctrine of “equal pay for equal work” depends upon a large number of factors, including equal work, equal value, source and manner of appointment, equal identify of group and wholesale or complete identity with the employee with whom equality is claimed. The same threads of thoughts were there in *Ramesh Chandra Bajpai* [2009 (123) FLR 525] wherein the Apex Court ruled that similarity in the designation or nature or quantum of work is not determinative of equality in the matter of pay scales. It was emphasized that the Court has to consider the factors like the source and mode of recruitment/ appointment, qualifications, the nature of work, the value thereof, responsibilities, reliability, experience, confidentiality, functional need, etc. In other words, the equality clause can be invoked in the matter of pay scales only when there is wholesale identity between the holders of two posts.

39. Relying on the above law, it would be considered as to whether there is complete and wholesale identity between the claimants and regular employees recruited by the Corporation, following recruitment rules. Answer lies in negative. The claimants were engaged on 25.10.1997/ 01.01.1998, as daily wagers. They were not engaged in consonance of recruitment rules. There is no identity between them and regular beldars, recruited in consonance of the rules of recruitment. In such a situation the claimant cannot invoke the doctrine of “equal pay for equal work”. The Corporation has not committed any illegality when minimum wages were paid to the claimants.

40. The foregoing reasons make me to conclude that the claimants are not entitled to any relief. Action of the Corporation in denying regularization in its service and payment of salary thereof to *Shri Ashok* and 5 others is found to be justified. No relief can be granted in favour of the claimants. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated : 29-11-2013

Dr. R. K. YADAV, Presiding Officer



नई दिल्ली, 24 जनवरी, 2014

**का.आ. 494.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 17) के अनुसरण में केन्द्रीय सरकार कमिशनर म्युनिसिपल कारपोरेशन ऑफ दिल्ली के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, दिल्ली के पंचाट (संदर्भ संख्या 168/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-01-2014 को प्राप्त हुआ था।

[ सं. एल-42012/68/2010-आई आर (डीयू) ]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 24th January, 2014

**S.O. 494.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. 168/2012) of the Central Government Industrial Tribunal/Labour Court No.1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Commissioner, Municipal Corporation of Delhi and their workman, which was received by the Central Government on 18-01-2014

[No. L-42012/68/2010-IR(DU)]

P. K. VENUGOPAL, Section Officer

#### ANNEXURE

**BEFORE DR. R. K. YADAV, PRESIDING OFFICER,  
CENTRAL GOVT. INDUSTRIAL TRIBUNAL NO. I,  
KARKARDOOMA COURTS COMPLEX : DELHI**

**I.D. No. 168/2012**

Shri Suresh Singh,  
S/o. Late Shri Bhudev Prasad,  
Through The General Secretary, Nagar Nigam  
Karamchari Sangh,  
Delhi Pradesh, P-2/624, Sultanpuri,  
Delhi. . . . . Workman

#### Versus

The Commissioner,  
Municipal Corporation of Delhi,  
Town Hall, Chandni Chowk,  
Delhi-110006. . . . . Management

#### AWARD

A chowkidar employed by Municipal Corporation of Delhi (in short the Corporation) claimed payment of overtime allowance, since he was made to work beyond normal duty hours. His claim was not conceded to by the Corporation. He approached the Nagar Nigam Karamchari Sangh (Delhi) (in short the union) for redressal of his grievances. The union served notice on the Corporation

seeking overtime allowance for duties performed in excess of normal working hours, wages for weekly holidays, gazetted holidays and casual leaves which notice was not responded to. A dispute was, raised before the Conciliation Officer. Since the Corporation contested the claim, conciliation proceedings ended into a failure. On consideration of failure report, submitted by the Conciliation Officer, the appropriate Government referred the dispute to this Tribunal for adjudication, vide order No. L-42012/68/2010-IR(DU) dated 22.11.2012, with following terms:

“Whether action of the management of Municipal Corporation of Delhi (MCD) in denying overtime wages to the workman, Shri Suresh Singh. S/o late Shri Bhudev Prasad, Chowkidar for performing 10 (ten) hours duty per day since the regularization of the workman Shri Suresh Singh with effect from 01.04.2004 is justified or not? If not, what relief the workman is entitled to and from which date?”

2. In the reference order, the appropriate Government commanded the parties to the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions, so given, the Chowkidar, namely, Shri Suresh Singh opted not to file his claim statement with the Tribunal.

3. Notice was sent to Shri Suresh Singh by registered post on 03.12.2012, calling upon him to file claim statement before the Tribunal on or before 02.01.2013. This notice was sent to him through the union, at P-2/624, Sultanpuri, Delhi, the address provided by the appropriate Government in order of reference. Neither the claimant nor the union responded to the notice, so sent.

4. Since none came forward on behalf of the claimant to file his claim statement, fresh notice was sent to him by registered post on 04.01.2013 calling upon him to file claim statement before the Tribunal on 29.01.2013. Notice was transmitted to the claimant by registered post on 31.01.2013 asking him to file his claim statement on or before 20.02.2013. Lastly, notice dated 22.2.2013 was sent by registered post commanding the claimant to file his claim statement before the Tribunal on or before 22.03.2013. Neither the postal articles, referred above, were received back nor was it observed by the Tribunal that postal services remained affected in the period, referred above. Therefore, every presumption lies in favour of the fact that the above notices were served upon the claimant. Despite service of these notices, claimant opted to abstain away from the proceedings. No claim statement was filed on his behalf.



5. Since onus of the question referred for adjudication was there on the Corporation, it was called upon to file its response to the reference order. Corporation filed its response, pleading therein that the dispute was not properly espoused by the union, hence liable to be rejected. It further asserted that the dispute has been raised at a belated stage, hence it became stale. The Appropriate Government cannot refer such a dispute for adjudication, as it has become stale. The dispute is liable to be rejected on this count also, claims the Corporation.

6. The Corporation projects that claimant was getting overtime allowance @ Rs. 625.00 upto a maximum of 50 hours in a month in accordance with circular dated 15.03.1997. For work performed on Sundays and holidays, the chowkidars gets compensatory leave in lieu thereof, hence not - entitled to overtime allowance. Chowkidars are entitled to 15 days casual leave 3 national holidays and 6 other holidays of their choice in every calendar year. Their normal duty hours are 10 hours per day and previously chowkidars were entitled to 24 hours rest (one day) in fortnight. Now, a chowkidar is getting overtime allowance for 100 hours per month in accordance with circular dated 09.05.2011. Details of overtime allowance granted to the claimant from June 88 to March 2013 are annexed as Annexure C with the response. In view of these facts, claimant is not entitled to any relief, claims the corporation.

7. Arguments were heard at the bar. None came forward on behalf of the claimant to advance arguments. Shri Umesh Gupta, authorized representative, assisted by Ms. Jaishri, School Inspector, raised submissions on behalf of the Corporation. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involve in the controversy are as follows:

8. At the outset, it has been argued that the dispute has not acquired status of an industrial dispute since it has not been validly espoused by the union. For an answer, definition of the term industrial dispute is to be construed. For sake of convenience, definition of the term “industrial dispute”, as defined by section 2(k) of the Industrial Disputes Act, 1947 (in short the Act).

“(k) “Industrial dispute” means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person”.

9. The definition of “industrial dispute” referred above, can be divided into four parts, viz. (i) factum of dispute, (2) parties to the dispute, viz.(a) employers and employers, (b) employer and workmen, or (c) workmen

and workmen, (3) subject matter of the dispute, which should be connected with -(i) employment or non employment, or (ii) terms of employment, or (iii) condition of labour of any person, and (4) it should relate to an “industry”.

10. The definition of “industrial dispute” is worded in very wide terms and unless they are narrowed by the meaning given to word “workman” it would seem to include all “employers”, all “employments” and all “workmen”, whatever the nature or scope of the employment may be. Therefore, except in the case where there can be a dispute between the employers and employers and workmen and workmen, one of the parties to an industrial dispute must be an employee or a class of employees. The first point, therefore, to be noted, perhaps self evident, is that the phrase “employer and workmen”, the plural may include singular on either side or any permutation of singular or plural, the masculine including the feminine. In order, therefore, to determine as to whether a controversy or difference or a dispute is an “an industrial dispute” or not it must first be determined whether the workman concerned or workmen sponsoring his cause satisfy the conditions of clause (s) of section 2 of the Act. Here in the case, the Corporation does not dispute that the claimant is workman within the meaning of clause(s) of section 2 of the Act.

11. The Apex Court put gloss on the definition of “industrial dispute” in *Dimakuchi Tea Estate* [1958 (1) LLJ 500] and ruled that the expression “any person” in clause (k) of section 2 of the Act must be read subject to such limitation and qualification as arise from the context, the two crucial limitations are (i) the dispute must be a real dispute between the parties to the dispute (as indicated in the first two parts of the definition clause) so as to be capable of settlement or adjudication by one party to the dispute giving necessary relief to other, and (2) the person regarding whom the dispute is raised must be one for whose employment, non employment, terms of employment or conditions of labour, as case may be, the parties dispute for a direct or substantial interest. Where workman raised a dispute as against their employment, the person regarding whose employment, non employer, terms of employment or conditions of labour, the dispute is raised need not be strictly speaking “workman” within the meaning of the Act, but must be one in whose employment, non employer, terms of employment, or conditions of labour the workmen as a class have a direct or substantial interest. The observations made by the Apex Court are to be extracted thus :

“We also agree with the expression “any person” is not co-extensive with any workman, particular or otherwise, equal with other, that the crucial test is one of community of interest and the person regarding whom the dispute is raised must be one in whose employment, non employment, terms of

employment, conditions of labour (as the case may be) the parties to the dispute have a direct or substantial interest. Whether such direct or substantial interest has been established in a particular case will depend on its facts and circumstances.”

12. In *Kyas Construction Company (Pvt.) Ltd.* [1958 (2) LLJ 660] the Apex Court ruled that an industrial dispute need not be a dispute between the employer and his workman and that the definition of the expression “industrial dispute” is wide enough to cater a dispute raised by the employer’s workman with regard to non employment of others, who may not be employed as workman at the relevant time. The Apex Court in *Bombay Union of Journalist* [1961 (II) LLJ 436] has observed that in each case in ascertaining whether an individual dispute has acquired the character of an industrial dispute, the test is whether at the date of reference, the dispute was taken up as submitted by the union of the workmen of the employer against whom, the dispute is raised by an individual workman or by an appreciable number of workmen. In order, therefore, to convert an individual dispute into an industrial dispute, it has to be established that it has been taken up by the union of employees of the establishment or by an appreciable number of the employees of the establishment. As far as union of the workmen of establishment itself is concerned, the problem of espousal by them generally presents little difficulty, since such workmen who are members of such unions generally have a continuity of interest with an individual employee who is one of their fellow workman. But difficulty arise when the cause of a workman, in a particular establishment is sponsored by a union which is not of the workmen of that establishment but is one of which membership is open to workmen of their establishment as well as in that industry. In such a case a union which has only microscopic number of the workmen as its member, cannot sponsor any dispute arising between the workmen and the management. A representative character of the union has to be gathered from the strength of the actual number of co-workers sponsoring the dispute. The mere fact that a substantial number of workmen of the establishment in which the concerned workman was employee were also members of the union would not constitute sponsorship. It must be shown that they were connected together and arrived at an understanding by a resolution or by other means and collectively submitted the dispute.

13. The expression “industrial disputes” has been construed by the Apex Court to include individual disputes, because of the scheme of the Act. In *Raghu Nath Gopal Patvardhan* [1957(1) LLJ 27] the Apex Court ruled as to what dispute can be called as an industrial dispute. It was laid thereon that (1) a dispute between the employer and a single workman cannot be an industrial

dispute, (2) it can not be per-se be an industrial dispute but may become if it is taken up by a trade union or a number of workmen. In *Dharampal Prem Chand* [1965 (1) LLJ 668] it was commanded by the Apex Court that a dispute raised by a single workman cannot become an industrial dispute unless it is supported either by his union or in the absence of a union by substantial number of workmen. Same law was laid in the case of *Indian Express Newspaper (Pvt.) Limited* [1970 (1) LLJ 132]. However in *Western India Match Company* [1970 (II) LLJ 256], the Apex Court referred the precedent in *Drona Kuchi Tea Estate’s case* [1958 (1) LLJ 500] and ruled that a dispute relating to “any person becomes a dispute where the person in respect of whom it is raised is one in whose employment, non employment, terms of employment or conditions of labour, the parties dispute for a direct or substantial interest”.

14. What a substantial or considerable number of workmen would be in a given case, depend on particular facts of the case. The fact that an “industrial dispute”, is supported by other workmen will have to be established either in the form of a resolution of the union of which workman may be member or of the workmen themselves who support the dispute or in any other manner. From the mere fact that a general union, at whose instance an “industrial dispute” concerning an individual workman is referred for adjudication, has on its roll a few of the workmen of the establishment as its members, it cannot be inferred that the individual dispute has been converted into an “industrial dispute”. The Tribunal has therefore, to consider the question as to how many of the fellow workman actually espoused the cause of the concerned workman by participating in the particular resolution of the Union. In the absence of such a determination by the Tribunal, it cannot be said that the individual dispute acquired the character of an industrial dispute and the Tribunal will not acquire jurisdiction to adjudicate upon the dispute. Nevertheless, in order to make a dispute an industrial dispute, it is not necessary that there should always be a resolution of substantial or appreciable number of workmen. What is necessary is that there should be some express or collective will of a substantial or an appreciable member of the workmen treating the cause of the individual workman as their own cause. Law to this effect was laid in *P. Somasundaram* [1970 (1) LLJ 558].

15. It is not necessary that the sponsoring union is a registered trade union or a recognized trade union. Once it is shown that a body of substantial number of workmen either acting through a union or otherwise had sponsored the workman’s cause, it is sufficient to convert it into an industrial dispute. In *Pardeep Lamp Works* [1970 (1) LLJ 507] complaints relating to dispute of ten workmen were filed before the Conciliation Officer by the individual workmen themselves. But their case was subsequently taken up by a new union formed by a large number of co-workmen, if not a majority of them. Since this union was

not registered or recognized, the workmen elected five representatives to prosecute the cases of ten dismissed workmen. Thus cases of the dismissed workmen were espoused by the new union, yet unregistered and unrecognized. The Apex Court held that the fact that these disputes were not taken up by a registered or recognized union does not mean that they were not “industrial dispute”.

16. It is not expedient that same union should remain incharge of that dispute till its adjudication. The dispute may be espoused by the workmen of an establishment, through a particular union for making such a dispute an “industrial dispute”, while the workman may be represented before the Tribunal for the purpose of section 36 of the Act by a member of executive or office’ bearer of altogether another union. The crux of the matter is that the dispute should be a dispute between the employer and his workmen. It is not necessary that the dispute must be espoused or conducted only by a registered trade union. Even if a trade union ceases to be registered trade union during the continuance of the adjudication proceedings that would not affect the maintainability of the order of reference. Law to this effect was laid by the High Court of Orissa in Gammon India Limited [1974 (11) LLJ 34]. For ascertaining as to whether an individual dispute has acquired character of an individual dispute, the test is whether on the date of the reference the dispute was taken up as supported by the union of the workmen of the employer against whom the dispute is raised by the individual workman or by an appreciable number of the workman. In other words, the validity of the reference of an industrial dispute must be judged on the facts as they stood on the date of the reference and not necessarily on the date when the cause occurs. Reference can be made to a precedent in Western India Match Co. Ltd. [1970 (II) LLJ 256].

17. Here in the case, not even an iota of facts are brought over the record to the effect that the union took up the cause of the claimant as their own. It is also not shown that the members of the union had shown their collective will in favour of the cause of the claimant. Thus it is evident that there is a complete vacuum of facts to the effect that the union espoused the cause of the claimant. Resultantly there is no material to conclude to the effect that the dispute acquired status of an industrial dispute. The reference is liable to be answered against the claimant on that score.

18. Next count of attack made by the Corporation that the dispute was raised by the claimant after 8 years, which frustrates the relief in his favour. Section 10(1) of the Act does not prescribe any period of limitation for making reference of the dispute for adjudication. The words ‘at any time’ used in sub section (1) of Section 10 of Act does not admit of any limitation in making an order of

reference. Law of limitation, which might bar any Civil Court from giving remedy in respect of lawful rights, cannot be applied by Industrial Tribunals. However, policy of industrial adjudication is that stale claim should not be generally encouraged, or allowed unless there is satisfactory explanation for delay. In Shalimar Works Ltd. [1959 (2) LLJ 26], the Apex Court pointed out that though there is no limitation prescribed in making reference of the dispute to Industrial Tribunal, even so, it is only reasonable that disputes should be referred as soon as possible after having arisen and on failure of conciliation proceedings. In Western India Match Company [1970 (2) LLJ 256] the Apex Court observed that in exercising its discretion, Government will take into account time which has lapsed between its earlier decision and the date when it decides to consider it in the interest of justice and industrial peace to make the reference for adjudication. Same view was taken in Mahabir Jute Mills Ltd. [1975 (2) LLJ 326]. In Gurmail Singh [2000 (1) LLJ 1080] Industrial Adjudicator dismissed the reference on the ground that there was delay of 8 years in raising the dispute, which delay was condoned by the Apex Court and it was ordered that the workman would not be entitled to any back wages for the period of 8 years but would be entitled to 50% of wages from the date it raised the dispute till the date of his reinstatement. In Prahalad Singh [2000 (2) LLJ 1653], the Apex Court approved the award of the Tribunal in not granting any relief to the workman who preferred the claim after a period of 13 years without any reasonable or justifiable grounds. In Nedungadi Bank Ltd. [2002 (2) SCC 4] a lapse of seven years in raising the dispute was held to be a factor to refuse the relief. The Apex Court ruled that the appropriate Government has to exercise its powers of referring the dispute in a reasonable manner Delay of seven years made the Court to conclude that there was no dispute existing or apprehended when decision was taken to refer it for adjudication. Same view was taken in Haryana State Co-operative Land Development Bank [2005 (5) S.C.C. 91]. From above decisions, it can be said that the law relating to delay in raising or reference of dispute is bereft of any principles, which can be easily comprehended by the litigants.

19. Claimant raised the dispute in respect of overtime allowance paid to him with effect from 01.04.2004. Thus, it is emerging over the record that the claimant had raised the dispute after a long gap of 8 years. No explanation is offered for this inordinate delay. It appears that there was no industrial dispute in existence or could be even said to have been apprehended in the year 2012, when the appropriate Government applied its mind to the facts of the present controversy.

20. Corporation contests the dispute on the count that no notice of demand was served on it prior to raising a dispute before the Conciliation Officer. These facts also remained uncontroverted. The object of the Act is to



protect workman against victimization by the employer and ensure termination of industrial dispute in a peaceful manner. The Act, however, does not provide for any set of social and economic principles for adjustment of conflicting interests. Such norms have been evolved and devised by industrial adjudication, keeping in view the social and economic conditions, the needs of the workmen, the requirement of the industry, social justice, relative interests of the parties and common good. These norms have given rights to the industrial employees what may be called industrial rights, as such rights may not be available at common law. Disputes as to the conditions of employment can be resolved by resorting to a technique known as collective bargaining. This tool is resorted to between an employer or group of employers and a bonafide labour union. Policy behind this is to protect workmen as a class against unfair labour practices. What imparts to the dispute of a workman the character of an “industrial dispute” is that it affects the right of the workmen as a class.

21. An industrial dispute comes into existence when the employer and the workman are at variance and the dispute/difference is connected with the employment or non-employment, terms of employment or with conditions of labour. In other words, dispute or difference arises when a demand is made by the workman on the employer and it is rejected by him and vice versa. In *Sindhu Resettlement Corporation Ltd.* (1968(1) LLJ 834), the Apex Court has held that mere demand, asking the appropriate Government to refer a dispute for adjudication, without being raised by the workmen with their employer, regarding such demand, cannot become an industrial dispute. Hence, an industrial dispute cannot be said to exist until and unless a demand is made by the workman or workmen on the employer and it has been rejected by him. In *Fedders Lloyd Corporation Pvt. Ltd.* (1970 Lab.I.C. 421), High Court of Delhi went a step ahead and held that “. . . demand by the workman must be raised first on the management and rejected by it, before an industrial dispute can be said to arise and exist and that the making of such a demand to the Conciliation Officer and its communication by him to the management, who rejected the demand, is not sufficient to constitute an industrial dispute.”

22. The above decision was followed by Orissa High Court in *Orissa Industries Pvt. Ltd.* (1976 Lab.I.C. 285) and Himachal Pradesh High Court in *Village Paper Pvt. Ltd.* (1993 Lab.I.C. 99). However, the Apex Court in *Bombay Union of Journalists* (1961 (2) LLJ 436) had ruled that an industrial dispute must be in existence or apprehended on the date of reference. If, therefore, a demand has been made by the workman and it has been rejected by the employer before the date of reference, whether direct or through the Conciliation Officer, it would constitute an industrial dispute. In *Shambhunath Goyal* (1978(1) LLJ 484), the Apex Court appreciated facts that the workman had

not made a formal demand for his reinstatement in service. However, he had contested his dismissal before the Enquiry Officer and claimed reinstatement. Against the findings of the Enquiry Officer, he preferred an appeal to the Appellate Authority, claiming reinstatement on the ground that his dismissal was bad in law. Then again, he claimed reinstatement before the Conciliation Officer in the course of conciliation proceedings, which was contested by the employer. Appreciating all these facts, the Apex court inferred that there was impeccable evidence that the workman had persistently demanded reinstatement, rejection’ of which brought an industrial dispute into existence.

23. In *New Delhi Tailor Mazdoor Union* (1979(39) FL T 195), High Court of Delhi noted that *Shambunath Goyal* had not overruled *Sindhu Resettlement Pvt. Ltd.* But it had distinguished it on facts. It was also pointed out that decision of three Judges bench in *Sindhu Resettlement Pvt. Ltd.* could not have been overruled by two Judge bench in *Shambunath Goyal*. The High Court concluded that decision in *Sindhu Resettlement Pvt. Ltd.*, in case of any conflict between the two decisions, must prevail. The High Court held that making of the demand by the workman on the management was sine qua non for giving rise to an industrial dispute.

24. The High Court of Madras in *Management of Needle Industries* (1986(1) LLJ 405) has held that dispute or difference between management and the workman, automatically arises when the workman is dismissed from service. His dismissal per se creates a dispute or difference between the management and the workman. The Court further observed that “it is nowhere stipulated in the Act, particular in section 2(k), that existence of the dispute as such is not enough but then there should be a demand by the workman on the management to give rise to an industrial dispute”. However, this decision appears to be inconsistent with the ratio of decision in *Bombay Union of Journalists* (supra) and *Sindhu Resettlement* (supra). No doubt, for existence of an industrial dispute, there should be a demand by the workman and refusal to grant it by the management. However, a demand should be raised, cannot be a legal notion of fixity and rigidity. Grievances of the workman and demand for its redressal must be communicated to the management. Means and mechanism of the communication adopted are not matters of much significance, so long as demand is that of the workman and it reaches the management. Reference can be made to the precedent in *Ram Krishna Mills Coimbatore Ltd.* (1984 (2) LLJ 259).

25. The Act nowhere contemplates that the industrial dispute can come into existence in any particular, specific or prescribed manner nor there is any particular or prescribed manner in which refusal should be communicated. For an industrial dispute to come into existence, written claim is



not sine qua non. To read into the definition, requirement of written demand for bringing an industrial dispute into existence would tantamount to rewriting the section, announced the Apex Court in Shambunath Goyal (supra). In other words, oral demand and its rejection will as much bring into existence an industrial dispute, as written one. If facts and circumstances of the case show that the workman had been making a demand, which the management had been refusing to grant, it can be said that there was an industrial dispute between the parties.

26. Since the claimant had not come forward to project that demand notice was served on the corporation, under these circumstances, stand taken by the corporation is to be believed. Corporation projects that no notice of demand was served on it, before industrial dispute was raised before the Conciliation Officer. Thus, it is emerging over the record that it has not been established that demand was raised on the corporation, which was rejected by it and as such, dispute has not acquired status of an industrial dispute.

27. Turning to facts presented by the Corporation, it emerges that the Corporation takes. 10 hours duty from Chowkidars. Keeping in view the nature of duties performed, the Corporation was paying intermittent allowance to Chowkidars for performing more than 10 hours duty. Allowance was paid @ Rs.130.00 per month for performance of duty upto 12 hours, Rs.180.00 per month for duties performed for more than 12 hours but upto 16 hours and Rs.190.00 per month for performing duties more than 16 hours a day. Workers union agitated the issue and demanded overtime allowance in lieu of intermittent allowance. On the basis of the resolution, the Corporation, vide its decision dated 15.03.1997 decided to pay overtime allowance to the maximum limit of 50 hours. The said allowance was paid @Rs. 625.00 per month. Workers union further demanded enhancement of maxima limit of overtime allowance and in consideration of the said demand, the Corporation started paying overtime allowance with a cap of 100 hours a month. Now, the Corporation is paying overtime allowance to Chowkidars at Rs.1250.00, in pursuance of Office Order dated 09.05.2011.

28. Annexure C, when scanned, highlights that from January 98 till March 2011, overtime allowance was paid to the claimant @ Rs.625.00 per month. From April 2011 till March 2013, overtime allowance has been paid to the claimant @ 1250.00 per month. Therefore, it is emerging over the record that overtime allowance is being paid to the claimant in accordance with the circulars, issued by the Corporation from time to time.

29. In view of the above reasons, it is evident that the action of the Corporation in paying overtime allowance to the claimant @ Rs.625.00 per month till March 2011 and thereafter Rs.1250.00 till date is in accordance with the

circulars issued from time to time. Claimant is not entitled to overtime allowance more than the amount referred above. Resultantly, action of the Corporation is found to be justified. No relief is available to the claimant. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Date: 06.12.2013

Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 24 जनवरी, 2014

**का.आ. 495.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कमिशनर म्युनिसिपल कारपोरेशन ऑफ दिल्ली के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, दिल्ली के पंचाट (संदर्भ संख्या 200/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-01-2014 को प्राप्त हुआ था।

[सं. एल-42012/50/2010-आई आर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 24th January, 2014

**S.O. 495.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D No. 200/2012) of the Central Government Industrial Tribunal/Labour Court No.1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Commissioner, Municipal Corporation of Delhi and their workman, which was received by the Central Government on 18-01-2014.

[No. L-42012/50/2012-IR(DU)]

P. K. VENUGOPAL, Section Officer

#### ANNEXURE

**BEFORE DR. R. K. YADAV, PRESIDING OFFICER,  
CENTRAL GOVT. INDUSTRIAL TRIBUNAL NO. I,  
KARKARDOOMA COURTS COMPLEX : DELHI**

**I.D. No. 200/2012**

Smt. Memwati,  
W/o. Late Shri Satish Chander,  
Through Nagar Nigam Karamchari Sangh,  
Delhi Pradesh, P-2/624, Sultanpuri,  
Delhi. ...Workman

Versus

The Commissioner,  
Municipal Corporation of Delhi,  
Town Hall, Chandni Chowk,  
Delhi-110006. ...Management

**AWARD**

One Shri Satish Kumar, was engaged on muster roll by erstwhile Delhi Water Supply and Sewerage Disposal Undertaking. His engagement was for intermittent period in case of exigencies. In 1998, Delhi Jal Board (in short the Board) came into existence. Some of the employees working with Delhi Water Supply and Sewerage Disposal Undertaking were transferred to the Board. As such, Shri Satish Kumar also worked on muster roll with the Delhi Jal Board for a period of seven months. He expired on 26.10.1998. After a long gap of 14 years his widow, namely Smt. Memwati, raised a demand on the Municipal Corporation of Delhi (in short the Corporation) as well, as the Board for grant of family pension. When her demand was not conceded, she approached the Nagar Nigam Karamchari Sangh (in short the union) for redressal of her grievances. The union raised a dispute before the Conciliation Officer. Since the Corporation and the Board contested the claim, conciliation proceedings ended into a failure. On consideration of failure report submitted by the Conciliation Officer, the appropriate Government referred the dispute to this Tribunal for adjudication, vide order No.L-42012/50/2012/IR(DU), New Delhi dated 06.12.2012 with following terms :

“Whether the action of the management of Municipal Corporation of Delhi (MCD) and Delhi Jal Board (DJB) in denying the family pension with all consequential benefits to Smt. Memwati, w/o late Satish Chander. ex-Sewerage Beldar with effect from the death of the workman. i.e. 26.10.1998 onward is justified or not? If not, what relief the workman is entitled to and from which date?”

2. In the reference order, the appropriate Government commanded the parties to the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions, so given, Smt. Memwati opted not to file her claim statement With the Tribunal.

3. Notice was sent to Ms. Memwati by registered post on 29.12.2012, calling upon her to file claim statement before the Tribunal on or before 17.01.2013. This notice was sent to her through the union, at P-2/624, Sultanpuri, Delhi, the address provided by the appropriate Government in order of reference. Neither the claimant nor the union responded to the notice, so sent.

4. Since none came forward on behalf of the claimant to file her claim statement, fresh notice was sent to her by registered post on 22.01.2013 calling upon her to file claim statement before the Tribunal on 11.02.2013. Notices were again transmitted to the claimant by registered post on 12.02.2013 and 12.03.2013 asking her to file her claim

statement on or before 08.03.2013 and 08.04.2013 respectively. Lastly, notice dated 04.07.2013 was sent by registered post commanding the claimant to file her claim statement before the Tribunal on or before 22.07.2013. Neither the postal articles, referred above, were received back nor was it observed by the Tribunal that postal services remained affected in the period, referred above. Therefore, every presumption lies in favour of the fact that the above notices were served upon the claimant. Despite service of these notices, claimant opted to abstain away from the proceedings. No claim statement was filed on her behalf.

5. Since onus of the question referred for adjudication was on the Corporation and the Board, it were called upon to file their response to the reference order. In its response to the reference order, the Corporation presents that as per facts given in the reference order, Shri Satish Kumar expired on 26.10.1998. His widow, namely, Smt. Memwati raised a dispute after about 14 years. Long delay in raising the dispute frustrates her claim. Even otherwise, her husband was working with the Board and the Corporation has no concern with him. Smt. Memwati has no claim against the Corporation for grant of family pension.

6. The Board presents that Shri Satish was initially engaged on muster roll as beldar in Delhi Water Supply and Sewerage Disposal Undertaking. When the Board came into existence in 1998, some of the employees working with Delhi Water Supply and Sewerage Disposal Undertaking were transferred to the Board. Shri Satish worked for a period of seven months with the Board as daily wager on muster roll. He expired on 26.10.1998. Since he was a muster roll employee, his widow is not entitled to family pension.

7. Arguments were heard at the bar. None came forward on behalf of the claimant to advance arguments. Shri Umesh Gupta, authorized representative, raised submissions on behalf of the Corporation. Shri Rajender Saini, authorised representative, advanced arguments on behalf of the Board. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows :

8. At the outset, it has been urged that the dispute is not an industrial dispute for want of espousal by the union or considerable number of workman in the establishment of the Corporation or the Board. Since the dispute is an individual dispute, this Tribunal has no jurisdiction to entertain it. For an answer to this proposition, definition of the term ‘industrial dispute’ is to be construed. Section 2(k) of the Industrial Disputes Act, 1947 (in short the Act), defines the term ‘industrial dispute’, which definition is extracted thus :

“2(k) “Industrial dispute” means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;”

9. The definition of “industrial dispute” referred above, can be divided into four parts, viz. (i) factum of dispute, (2) parties to the dispute, viz. (a) employers and employers, (b) employer and workmen, or (c) workmen and workmen, (3) subject matter of the dispute, which should be connected with — (i) employment or non employment, or (ii) terms of employment, or (iii) condition of labour of any person, and (4) it should relate to an “industry”.

10. The definition of “industrial dispute” is worded in very wide terms and unless they are narrowed by the meaning given to word “workman” it would seem to include all “employers”, all “employments” and all “workmen”, whatever the nature or scope of the employment may be. Therefore, except in the case where there can be a dispute between the employers and employers and workmen and workmen, one of the parties to an industrial dispute must be an employee or a class of employees. The first point, therefore, to be noted, perhaps self evident, is that the phrase “employer and workmen”, the plural may include singular on either side or any permutation of singular or plural, the masculine including the feminine. In order, therefore, to determine as to whether a controversy or difference or a dispute is an “an industrial dispute” or not, it must first be determined whether the workman concerned or workmen sponsoring his cause satisfy the conditions of clause (s) of section 2 of the Act. Here in the case the Corporation does not dispute status of the claimant to be of a workman within the meaning of section 2(s) of the Act.

11. The Apex Court put gloss on the definition of “industrial dispute” in *Dimakuchi Tea Estate* [1958 (1) LLJ 500] and ruled that the expression “any person” in clause (k) of section 2 of the Act must be read subject to such limitation and qualification as arise from the context, the two crucial limitations are (i) the dispute must be a real dispute between the parties to the dispute (as indicated in the first two parts of the definition clause) so as to be capable of settlement or adjudication by one party to the dispute giving necessary relief to other, and (2) the person regarding whom the dispute is raised must be one for whose employment, non employment, terms of employment or conditions of labour, as case may be, the parties dispute for a direct or substantial interest. Where workman raised a dispute as against their employment, the person regarding whose employment, non employer, terms of employment or conditions of labour, the dispute is raised

need not be strictly speaking “workman” within the meaning of the Act, but must be one in whose employment, non employment, terms of employment, or conditions of labour the workmen as a class have a direct or substantial interest. The observations made by the Apex Court are to be extracted thus :

“We also agree with the expression “any person” is not co extensive with any workman, particular or otherwise, equal with other, that the crucial test is one of community of interest and the person regarding whom the dispute is raised must be one in whose employment, non employment, terms of employment, conditions of labour (as the case may be) the parties to the dispute have a direct or substantial interest. Whether such direct or substantial interest has been established in a particular case will depend on its facts and circumstances.”

12. In *Kyas Construction Company (Pvt.) Ltd.* [1958 (2) LLJ 660], the Apex Court ruled that an industrial dispute need not be a dispute between the employer and his workman and that the definition of the expression “industrial dispute” is wide enough to cater a dispute raised by the employer’s workman with regard to non employment of others, who may not be employed as workman at the relevant time. The Apex Court in *Bombay Union of Journalist* [1961 (II) LLJ 436] has observed that in each case in ascertaining whether an individual dispute has acquired the character of an industrial dispute, the test is whether at the date of reference, the dispute was taken up as submitted by the union of the workmen of the employer against whom, the dispute is raised by an individual workman or by an appreciable number of workmen. In order, therefore to convert an individual dispute into an industrial dispute, it has to be established that it has been taken up by the union of employees of the establishment or by an appreciable number of the employees of the establishment. As far as union of the workmen of establishment itself is concerned, the problem of espousal by them generally presents little difficulty, since such workmen who are members of such unions generally have a continuity of interest with an individual employee who is one of their fellow workman. But difficulty arise when the cause of a workman, in a particular establishment is sponsored by a union which is not of the workmen of that establishments but is one of which membership is open to workmen of their establishment as well as in that industry. In such a case a union which has only microscopic number of the workmen as its member, cannot sponsor any dispute arising between the workmen and the management. A representative character of the union has to be gathered from the strength of the actual number of eo workers sponsoring the dispute. The mere fact that a substantial number of workmen of the establishment in which the concerned workman was



employee were also members of the union would not constitute sponsorship. It must be shown that they were connected together and arrived at an understanding by a resolution or by other means and collectively submitted the dispute.

13. The expression “industrial disputes” has been construed by the Apex Court to include individual disputes, because of the scheme of the Act. In *Raghu Nath Gopal Patvardhan* [1957(1) LLJ 27] the Apex Court ruled as to what dispute can be called as an industrial dispute. It was laid thereon that (1) a dispute between the employer and a single workman cannot be an industrial dispute, (2) it cannot per-se be an industrial dispute but may become if it is taken up by a trade union or a number of workmen. In *Dharampal Prem Chand* [1965 (1) LLJ 668] it was commanded by the Apex Court that a dispute raised by a single workman cannot become an industrial dispute unless it is supported either by his union or in the absence of a union by substantial number of workmen. Same law was laid in the case of *Indian Express Newspaper (Pvt.) Limited* [1970 (1) LLJ 132]. However in *Western India Match Company* [1970 (II) LLJ 256], the Apex Court referred the precedent in *Dimakuchi Tea Estate’s case* [1958 (1) LLJ 500] and ruled that a dispute relating to “any person becomes a dispute where the person in respect of whom it is raised is one in whose employment, non employment, terms of employment or conditions of labour, the parties, dispute for a direct or substantial interest”.

14. What a substantial or considerable number of workmen would be in a given case, depend on particular facts of the case. The fact that an “industrial dispute”, is supported by other workmen will have to be established either in the form of a resolution of the union of which workman may be member or of the workmen themselves who support the dispute or in any other manner. From the mere fact that a general union, at whose instance an “industrial dispute” concerning an individual workman is referred for adjudication, has on its roll a few of the workmen of the establishment as its members, it cannot be inferred that the individual dispute has been converted into an “industrial dispute”. The Tribunal has therefore, to consider the question as to how many of the fellow workman actually espoused the cause of the concerned workman by participating in the particular resolution of the Union. In the absence of a such a determination by the Tribunal, it cannot be said that the individual dispute acquired the character of an industrial’ dispute and the Tribunal will not acquire jurisdiction to adjudicate upon tile dispute. Nevertheless, in order to make a dispute an industrial dispute, it is not necessary that them should always be a resolution of substantial or appreciable number of workmen. What is necessary is that there should be some express or collective will of a substantial or an appreciable member of the workmen treating the cause of the individual workman as their own cause. Law

to this effect was laid in *P. Somasundrameran* [1970 (1) LLJ 558].

15. It is not necessary that the Sponsoring union is a registered trade union or a recognized trade union. Once it is shown that a body of substantial number of workmen either acting through a union or otherwise had sponsored the workman’s cause, it is sufficient to convert it into an industrial dispute, In *Pardeep Lamp Works* [1970 (1) LLJ 507] complaints relating to dispute of ten workmen were filed before the Conciliation Officer by the individual workmen themselves. But their case was subsequently taken up by a new union formed by a large number of co workmen, if not a majority of them. Since this union was not registered or recognized, the workmen elected five representatives to prosecute the cases of ten dismissed .workmen. Thus cases of the dismissed workmen were espoused by the new union, yet unregistered and unrecognized. The Apex Court held that the fact that these disputes were not taken up by a registered or recognized union does not mean that they were not “industrial dispute”.

16. It is not expedient that same union should remain incharge of that dispute till its adjudication. The dispute may be espoused by the workmen, of an establishment, through a particular union for making such a dispute an “industrial dispute”, while the workman may be represented before the Tribunal for the purpose of section 36 of the Act by a member of executive or office bearer of altogether another union. The crux of the matter is that the dispute should be a dispute between the employer and his workmen. It is not necessary that the dispute must be espoused or conducted only by a registered trade union. Even if a trade union ceases to be registered trade union during the continuance of the adjudication proceedings that would not affect the maintainability of the order of reference. Law to this effect was laid by the High Court of Orissa in *Gammon India Limited* [1974 (II) LLJ 34]. For ascertaining as to whether an individual dispute has acquired character of an individual dispute, the test is whether on the date of the reference the dispute was taken up as supported by the union of the workmen of the employer against whom the dispute is raised by the individual workman or by an appreciable number of the workman. In other words, the validity of the reference of an industrial dispute must be judged on the facts as they stood on the date of the reference and not necessarily on the date when the cause occurs. Reference can be made to a precedent ‘in *Western India Match Co. Ltd.* [1970 (II) LLJ 256].

17. Here in the case, not even an iota of facts are brought over the record to the effect that the union took up the cause of the claimant as their own. It is also not shown that the members of the union had shown their collective will in favour of the cause of the claimant. Thus



it is evident that there is a complete vacuum of facts to the effect that the union espoused the cause of the claimant. Resultantly there is no material to conclude to the effect that the dispute acquired status of an Industrial dispute. The reference is liable to be answered against the claimant on that score.

18. Next count of attack has been made projecting that Shri Satish Kumar expired on 26.10.1998. Now, in the year 2012, dispute under reference has been raised. Long delay of 14 years had taken place, which frustrates the claim. Section 10 (1) of the Act does not prescribe any period of limitation for making reference of the dispute for adjudication. The words 'at any time' used in sub-section (1) of section 10 of Act does not admit of any limitation in making an order of reference. Law of limitation, which might bar any Civil Court from giving remedy in respect of lawful rights, cannot be applied by Industrial Tribunals. However, policy of industrial adjudication is that stale claim should not be generally encouraged or allowed unless there is satisfactory explanation for delay. In *Shalimar Works Ltd.* [1959 (2) LLJ 26], the Apex Court pointed out that though there is no limitation prescribed in making reference of the dispute to Industrial Tribunal, even so, it is only reasonable that disputes should be referred as soon as possible after having arisen and on failure of conciliation proceedings. In *Western India Match Company* [1970 (2) LLJ 256] the Apex Court observed that in exercising its discretion, Government will take into account time which has lapsed between its earlier decision and the date when it decides to consider it in the interest of justice and industrial peace to make the reference for adjudication. Same view was taken in *Mahabir Jute Mills Ltd.* [1975 (2) LLJ 326]. In *Gurmail Singh* [2000 (1) LLJ 1080] Industrial Adjudicator dismissed the reference on the ground that there was delay of 8 years in raising the dispute, which delay was condoned by the Apex Court and it was ordered that the workman would not be entitled to any back wages for the period of 8 years but would be entitled to 50% of wages from the date it raised the dispute till the date of his reinstatement. In *Prahalad Singh* [2000 (2) LLJ 1653], the Apex Court approved the award of the Tribunal in not granting any relief to the workman who preferred the claim after a period of 13 years without any reasonable or justifiable grounds. In *Nedungadi Bank Ltd.* [2002 (2) SCC 4] a lapse of seven years in raising the dispute was held to be a factor to refuse the relief. The Apex Court ruled that the appropriate Government has to exercise its powers of referring the dispute in a reasonable manner. Delay of seven years made the Court to conclude that there was no dispute existing or apprehended when decision was taken to refer it for adjudication. Same view was taken in *Haryana State Co-operative Land Development Bank* [2005 (5) S.C.C. 91]. From above decisions, it can be said that the law relating to delay in raising or reference of dispute is bereft of any

principles, which can be easily comprehended by the litigants.

19. Claimant expired on 26.10.1998. After his death, Ms. Memwati approached the union in the year 2011. The union raised the dispute before the Conciliation Officer, which dispute was contested. It is emerging over the record that for a period of more than 14 years, she remained in hibernation. One fine morning, she comes out of slumbers and approached the union for redressal of her grievance. Delay in raising the dispute would frustrate relief in her favour. Taking into account all these aspects, delay of nearly 14 years in raising the dispute would certainly come in her way. I am of the considered opinion that on account of delay of nearly 14 years, the claimant is not entitled to any relief.

20. The Board presents that Shri Satish Kumar worked for a period of 7 months as daily wager beldar. His services were never regularized by the Board. He never worked on any civil post. Question for consideration would be as to whether Ms. Memwati is entitled to family pension? Family pension is granted to the family of a Government service in the event of his death while in service or after retirement. Family Pension Scheme 1964 was introduced with effect from 01.01.1964. As per the Scheme, in the event of death of a Government servant while in service or after retirement, his family will get family pension if :

- (i) In the case of death while in service :
  - (a) He has completed a minimum period of one years' service; or
  - (b) He had been medically examined and found fit for appointment in Government service when his death occurred before completion of one years' service

- (ii) In case of death after retirement :

He was on the date of death in receipt of pension or compassionate allowance

21. Family pension is payable to the family of the deceased Government servant/pensioner. In the scheme, family has been defined to mean :

- (i) Wife (whether marriage took place before or after retirement) in the case of male government servant
- (ii) Husband (whether marriage took place before or after retirement) in the case of female Government service
- (iii) Unmarried son(s)/unmarried daughters (born before or after retirement) who have not attained the age of 25 years.

- (iv) Widowed daughters/divorced daughter (born before or after retirement) without any age restriction.
- (v) Parents who were wholly dependent on the Government servant when he was alive, provided that the deceased Government servant had left behind neither the widow/widower nor an eligible son or daughter or a widowed/divorced daughter and that the earnings of the parents is not more than Rs.3500.00 per month.

Unmarried son(s) below the age of 25 years or married daughter below the age of 25 years include such sons and daughters adopted before or after retirement. Wife or husband shall include respectively judicially separated wife and husband.

22. From January 2006, period for which family pension is payable is as follows :

- (i) In the case of childless widow, for life or till her independent income from all sources becomes equal to Rs. 3500.00 per month or more, i.e. even after remarriage.
- (ii) In the case of widow with child (ren) or widower upto to the date of death or remarriage, whichever is earlier.
- (iii) In the case of unmarried son/unmarried daughter, until he/she attains age of 25 years or upto to the date of his/her marriage or till the date from which her/his income becomes equal to Rs. 3500.00 or more per month.
- (iv) In the case of widow (including widowed/disabled)/divorced daughter(s) (including disabled) for life up to the date of her remarriage or till the date his/her income becomes equal to Rs. 3500.00 or more per month, or death, whichever is earlier. Such daughter shall not be required to come back to her parental home.
- (v) In the case of wholly dependent parents (till his/her death).

23. When facts of the present controversy are gauged through provisions of the scheme referred above, it came to light that Shri Satish Kumar never rendered service on a civil post. Therefore, his widow is not entitled to any relief of family pension under the scheme on factual matrix too.

24. In view of the foregoing reasons, it is evident that the above dispute has not acquired character of an industrial dispute and delay & laches also frustrates the relief. On factual matrix too, it has not been established that Shri Satish Kumar rendered service on civil post and service rendered by him qualifies for family pension. All these aspects make it clear that action of the Board in

denying family pension to Smt. Memwati with all consequential benefits is legal and justified. Smt. Memwati is not entitled to any family pension. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Date : 09.12.2013

Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 24 जनवरी, 2014

**का.आ. 496.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एतद्वारा पुरस्कार प्रकाशित करता है (संदर्भ संख्या 135/2011) जनरल मैनेजर, अशोका होटल, नई दिल्ली के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, दिल्ली के पंचाट को प्रकाशित करती है जो केन्द्रीय सरकार को 18-01-2014 को प्राप्त हुआ था ।

[सं. एल-42012/289/2010-आई आर (डीयू) ]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 24th January, 2014

**S.O. 496.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. 135/2011) of the Central Government Industrial Tribunal/Labour Court No. 1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The General Manager, Ashok Hotel New Delhi and their workmen, which was received by the Central Government on 18-01-2014.

[No. L-42012/289/2010-IR(DU)]

P. K. VENUGOPAL, Section Officer

**ANNEXURE**

**BEFORE DR. R. K. YADAV, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL  
NO. 1, KARKARDOOMA COURTS COMPLEX,  
DELHI**

**I.D. No. 135/2011**

The Surinder Kumar,  
S/o. Late Shri Ramji Lal,  
R/o. L-64, Patel Nagar,  
New Delhi.

... Workman

Versus

The General Manager,  
M/s. Ashok Hotel,  
50-B, Chanakyapuri,  
New Delhi.

... Management

### AWARD

A utility hand working with Ashok Hotel (in short the Hotel) started absenting himself from duties. His unauthorized long absence from duties caused inconvenience in smooth functioning of the Hotel. Despite advice, he continued to remain absent for long spells, which compelled the Hotel to serve a charge sheet on him. Domestic enquiry was constituted. Despite several opportunities accorded to him, he opted to abstain away from the enquiry. The Enquiry Officer conducted the enquiry ex-parte and submitted his report to the Disciplinary Authority. Concurring with the findings of the Enquiry Officer, the Disciplinary Authority awarded punishment of termination from service, vide order dated 15.06.2007. Feeling aggrieved, the utility hand raised an industrial dispute on 08.07.2008 before a Labour Court constituted by Government of NCT of Delhi, while using provisions of sub-section (4A) (inserted by the State Legislature on the strength of Act No. 9 of the 2013) after sub-section (4) of section 10 of the Industrial Disputes Act, 1947 (in short the Act). The said industrial dispute was held to be barred by time, vide award dated 28.11.2008. Writ petition preferred by the utility hand came to be dismissed by the High Court of Delhi, vide order dated 30.03.2009.

2. The utility hand raised a dispute thereafter before the Conciliation Officer (Central), Government of India, New Delhi, seeking reinstatement in service of the Hotel. The Hotel contested his claim. Conciliation proceedings ended into a failure. On consideration of failure report, so submitted by the Conciliation Officer, the appropriate Government referred the dispute to this Tribunal for adjudication, vide order No.L-42012/289/2010-IR(DU), New Delhi dated 12.12.2003, with following terms :

“Whether action of the management of Ashok Hotel, New Delhi, in termination of service of Shri Surender Kumar, utility workman, with effect from 15.06.2007 is legal and justified? What relief the workman is entitled for ?”

3. Claim statement was filed by the utility workman, namely, Shri Surender Kumar, pleading that he was serving the Hotel since 08.10.1998. He rendered service to the entire satisfaction of his superiors. His superior officer, namely, Shri Inder Dutt, used to put pressure on him for getting his personal work done, beyond duty hours. He was ordered to pick up Shri Inder Dutt from his residence and drop him there after office hours. Often and then, he used to pressurize him to bring vegetables and other grocery items for him. He was made to perform overtime duties but without payment of overtime allowance. When his seniors came to know that he was a member of scheduled caste community, they started calling him in caste names. They started harassing him. He was shown absent in the attendance register despite being present

for his duties. With a view to harass him, he was made to lift heavy bags of sugar, wheat and vegetables etc. though it was not part of his duties. The above pressure tactics put him in tension and he started suffering from depression.

4. Claimant presents that in the year 2005-06, he remained ill and availed leave on medical grounds. He informed his seniors on telephone as well as by way of sending message through his family members, about his ailment. Instead of sanctioning leaves to him, he was shown absent. His wages were also deducted on false and frivolous grounds in order to penalize him. He presents that he remained on leave from 01.01.2006 to 13.02.2006. He submitted his medical certificate for that period but was shown absent by the Hotel.

5. Claimant declares that he attended his duties from 14.02.2006 to 11.03.2006 but was shown absent willfully. He also performed duties on 11.04.2006, 16.04.2006 and 17.04.2006, but was shown absent. Though 18.04.2006 and 25.04.2006 were his weekly offs, he was shown absent. He was on duty 28.04.2006, 07.05.2006, 09.05.2006, 21.05.2006, 22.05.2006, 26.05.2006, 30.05.2006 and 31.05.2006 but was shown absent, with ulterior motives. He remained on medical leave from 02.06.2006 to 11.08.2006.

6. Claimant asserts that sometimes he had to work in the canteen, under orders of his superiors. Canteen authorities have issued certificate for rendering his duties there with effect from 14.02.2006 to 11.03.2006 but that period was shown as absent. It was so done with the intention to harass him. He was getting his treatment from Leprosy Home, Tahirpur, as well as from a private practitioner. He was treated by Shri Rakesh Malhotra, who had issued medical and fitness certificate in respect of his treatment in the months of June, July and August 2006. His medical certificate was neither taken on record nor he was allowed to join duties on 01.09.2006. He claims that no opportunity was accorded to him to offer his defence before the Enquiry Officer. No notice was issued to him by the Enquiry Officer. Enquiry was not conducted at all. Even otherwise, the enquiry was in violation of principles of natural justice. Enquiry report was not served on him. Termination of his services cannot be held to be justified.

7. According to him, direct industrial dispute raised before the Labour Court, constituted by Government of NCT Delhi, was rejected on technicalities. He assailed that award before High Court of Delhi but to no avail. His dispute was not adjudicated on merits. It led the appropriate Government to refer his dispute for adjudication to this Tribunal. Since action of the Hotel was violative of the provisions of Section 25F, 25G and 25H of the Act, he is entitled for reinstatement in service with continuity and full back wages.

8. Claim was demurred by the Hotel pleading that the claimant was habitually absenting from his duties. His absence from duties caused inconvenience to the Hotel. A charge sheet was served upon him. A domestic enquiry was conducted in consonance with principles of natural justice. Every opportunity was accorded to the claimant to defend himself. On consideration of report of the Enquiry Officer, the Disciplinary Authority inflicted punishment of termination from service on the claimant vide order dated 15.06.2007. He raised a direct dispute before the Labour Court, constituted by Government of NCT Delhi, which was decided against him vide award dated 25.11.2008. Writ petition, preferred by him, was also dismissed by the High Court, vide its order dated 30.03.2009.

9. The Hotel projects that services rendered by the claimants were not at all satisfactory. He remained absent in an unauthorized manner from his duties for the period from 01.01.2006 to 13.02.2006, 01.03.2006 to 11.03.2006, 11.04.2006, 16.04.2006 to 18.04.2006, 25.04.2006, 28.04.2006, 07.05.2006 to 09.05.2006, 21.05.2006, 22.05.2006, 26.05.2006, 30.05.2006, 31.05.2006, 02.06.2006 to 31.08.2006. In all he remained absent for 160 days from January 2006 to August 2006, which led the Hotel to serve charge sheet on him. Charge sheet was also served on him for his unauthorized absence in the year 2005 when he remained absent for 181 days from June 2005 to December 2005. Claimant never informed the Hotel about his alleged ailment. Full opportunities were given to the claimant to defend himself by the Enquiry Officer. On receipt of report of the Enquiry Officer, show. cause notice dated 30.05.2007 was served on proposed punishment. Copy of the Enquiry Report was sent to him. Claimant refused to accept the show cause notice. Ultimately, termination order dated 15.06.2007 was issued. Action of the Hotel in terminating his services cannot be said to be violative of principles of natural justice and fair play. It has been claimed that the dispute merits dismissal, hence it may be dismissed.

10. On pleadings of the parties, following issues were settled :

- I Whether enquiry conducted by the management was just, fair and proper ?
- II Whether punishment awarded to the claimant was proportionate to his misconduct?
- III As in terms of reference.

11. Issue No. (I) was treated as preliminary issue. Claimant had examined himself in support of his claim. Hotel brought Shri Amit Wadera and Shri Subhash Chandra in the witness box to fend facts. No other witness was examined by either of the parties.

12. On consideration of written arguments, submitted by the parties, besides records of the case,

preliminary issue was answered in favour of the Hotel and against the claimant, vide order dated 20.03.2013.

13. Arguments were heard at the bar. Ms. Shipra Shukla, authorized representative, advanced arguments on behalf of the Hotel on proportionality of punishment. She also filed her written submissions. On the other hand, none came forward on behalf of the claimant to make submissions. Written arguments were also not filed on his behalf. I have given my careful consideration to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows :

## Issue No. II

14. In order to assess as to whether punishment imposed is proportionate to the misconduct committed by the claimant, it is expedient to note charges levelled against him. Those charges emerge out of the charge sheet dated 18.02.2006, contents of which are reproduced thus :

“It has been reported against you that on receipt of information from Chef (Bakery) vide his IOC's dated 04.07.2006 and 06.06.2006, regarding your absenteeism with effect from 02.06.2006, you were directed to report for duty immediately vide telegraph/letter No.PB-28(364)/4870 dated 06.06.2006 of Manager (HR) sent at your residential address. But you did not report for duty. Again a letter bearing No.PB-28(364)/4870 dated 05.07.2006 of Manager(HR) was sent to you through Regd. AD post on 06.07.2006 to report for duty immediately. But you did not report for duty as stipulated by Chef (Bakery), vide his IOC dated 18.08.2006. Thus you have been absenting from duty unauthorizedly with effect from 02.06.2006 without any intimation and violating the instructions of the management.

2. Thus, it is well evident from the above as well as your attendance record for the period from January 2006 to August 2006 that you remained absent unauthorizedly on following days, besides vailing other leaves entitled to you :

Absent 01.01.2006 to 13.02.2006, 01.03.2006 to 11.03.2006, 11.04.2006, 16.04.2006 to 18.04.2006, 25.04.2006, 28.04.2006, 07.05.2006 to 09.05.2006, 21.05.2006, 22.05.2006, 26.05.2006, 30.05.2006, 31.05.2006, 02.06.2006 to 31.08.2006 - Total = 160 days.

3. Your remaining unauthorizedly absent from duty for the above stated period in above manner constitute breach of section 8 of the Standing Orders of Ashok Hotel and warrants disciplinary action against you. You are, therefore, charged for the following act of misconduct alleged to have been committed by you under section 14(VI), (IX) and 14(XXXV).



14(VI) : Habitual late attendance and habitual absence without sanctioned leave or without sufficient cause or obtaining visa, leaving the station/country without permission

14(IX) : Commissions of any act subversive of discipline or good behaviour within the establishment or outside.

14(XXXV) : Breach of Standing Orders of any rules or instructions for the maintenance and working of any department, plant or section, or for the maintenance of its cleanliness.

4. You are, hereby, directed to submit your written explanation within 72 hours of the receipt of this charge-sheet showing cause as to why strict disciplinary action should not be taken against you for the above acts of misconduct alleged to have been committed by you. In case you fail to submit your written explanation within the stipulated time, it will be presumed that you have no explanation to offer and admit the charges levelled against you.”

15. As projected above, the Enquiry Officer was constrained to proceed with the matter ex-parte when claimant opted to abstain from the enquiry proceedings. He examined Smt. Ranglani, Shri Rohit Kumar, Shri Jagan Nath and Shri S. V. Dua, who were produced before him by the Hotel. He appreciated evidence adduced before him, in the light of the documents proved by the Hotel. On appreciation of the documents produced in the enquiry as well as depositions made by the witnesses, he recorded findings against the claimant, which are reproduced thus :

“Shri Surender Kumar was charged, sheeted vide orders dated 21.09.2006 (Ex.M-1) for unauthorized absenteeism without any information or prior intimation w.e.f. 02.06.2006. Acknowledgment of the charge sheet dated 21.09.2006 was obtained from Sh.Surinder Kumar and the same has been marked as EX.M-15.

In response to the IOCs dated 04.07.2006 (Ex.M-3) & 06.06.2006 (Ex. M-5) Chef (Bakery) regarding absenteeism of Sh.Surinder Kumar w.e.f. 02.06.2006, a telegraph/letter No.PB-28(364)/4870 dated 06.06.2006 (Ex.M-6) of Mgr. (HR) was sent to Sh.Surinder Kumar at his last recorded residential address and the Regd. AD (Ex. MA) was returned undelivered with remarks “बार बार जाने पर प्राप्तकर्ता नहीं मिलता । अतः वापस”. Again a letter bearing No. PB-28(364)4870 dated 05.07.2006 of Mgr. (HR) was sent to him and the Regd. AD (Ex.M-8) was returned undelivered with remarks “बार बार जाने पर मकान बन्द मिलता है । अतः वापस”. But Sh.Surinder Kumar did not report for duty as stipulated by Chef (Bakery)

vide his IOC dated 18.08.2006(Ex.M-9). Thus, he was absenting himself from duty unauthorisedly w.e.f. 02.06.2006 without any intimation and violating the instructions of the Management Except proceedings dated 15.01.2007, which was duly acknowledged, all enquiry proceedings dated 27.12.2006, 05.02.2007, 07.04.2007, 17.04.2007, 30.04.2007 and 15.05.2007 were sent to his last recorded address through Registered AD Post and the same were returned back as undelivered with the remarks from the postal authority that “बार बार जाने पर तथा इतला देने पर भी प्राप्त करता नहीं मिला । अतः वापस जाएँ” and the same have been taken on record in the enquiry file.

Keeping in view the principle of natural justice and fair play, sufficient opportunities were given to Sh.Surinder Kumar to attend the enquiry proceedings and present his case in his defence, but he failed to do so. In spite of that, Sh.Surinder Kumar, CSE failed to attend even single enquiry proceedings in the above case.

It is well evident from the above that Sh.Surinder Kumar, Utility Workers, T.No.4870 has been absenting himself w.e.f. 02.06.2006 and during the period from 01.01.2006 to 31.08.2006, Sh.Surinder Kumar remained absent for 160 days unauthorisedly without prior permission/information from his Head of the Department or the HR Department of Ashok Hotel.

### Conclusion

On the basis of the document filed, witnesses produced and the above discussion, the charges, contained under section 14(VI), (IX) and (XXXV) of the Certified Standing Orders (Modified) of Ashok Hotel, levelled against Sh.Surinder Kumar, are held “Established/proved”.

16. Now an exercise would be undertaken to see as to whether punishment is proportionate to the misconduct of the claimant. Before adverting to the exercise, it would be expedient to have a glance on powers of the industrial adjudicator in that regard. Prior to introduction of section 11A of the Act, adjudicatory powers of the Tribunal were articulated in Buckingham & Carnatak Company (1951 (2) LLJ 314). Four standards were delineated by the Labour Appellate Tribunal in the above case to render managerial right of taking disciplinary action vulnerable, namely, (i) where there is a want of bonafides or (ii) when it is a case of victimization or unfair labour practice or violation of the principles of natural justice, or (iii) when there is basic error of facts, or (iv) when there has been a perverse finding on the materials. This articulation was adopted by the Apex Court with slight modification in Indian Iron and Steel Company Limited (1958 (1) LLJ 260), without any acknowledgement to the precedent in Buckingham &

Carnatic case (supra), wherein it was ruled that the power of the management to direct its own internal administration and discipline was not unlimited and liable to be interfered with by industrial adjudicator when a dispute arises to see whether termination of services of a workman is justified and to give appropriate relief. However, it was announced that the jurisdiction of an Industrial Tribunal to interfere with the managerial prerogative of taking disciplinary action is not of appellate nature as the legislature has not chosen to confer such jurisdiction upon it. Hence Tribunal could not substitute its own judgement for that of the management. The Court laid down that in the following circumstances an industrial adjudicator can interfere with the disciplinary action taken by the employer: (1) when there is want of good faith, (2) when there was victimization or unfair labour practice, (3) when the management had been guilty of a basic error or violation of the principles of natural justice, or (4) when on the materials, the finding was completely baseless or perverse.

17. Enunciation (1) and (2), referred above, are addressed to the bona fides of the employer in initiating the action and inflicting the punishment, while postulates (3) and (4) are addressed to domestic enquiry. Therefore, an employer is required to act bonafide in initiating disciplinary action as well as in inflicting the punishment. In initiating the action, the alleged act of misconduct should not be a ruse for something else, such as the trade union activities of the workman or employers dislike of him for some personal reasons. The action should not be motivated by vindictiveness or ulterior purpose, so as to smack for victimization or unfair labour practice. Likewise in the matter of inflicting punishment, the employer should act fairly. In case punishment awarded is so shockingly disproportionate to the act of the misconduct, as no reasonable man would ever impose that itself may lead to an inference of malafides, victimization or unfair labour practice. In holding enquiry, the Enquiry Officer must comply with the rules of natural justice. He must not be a biased person and give reasonable opportunity to both sides for being heard. His findings should not be baseless or perverse.

18. In Ramswarth Sinha (1954 L.A.C. 697) the Labour Appellate Tribunal recognized the right of the management to ask for permission to adduce evidence before the Tribunal to justify its action in a “no enquiry” case. Following that proposition the Apex Court equated the cases of “defective enquiry” with “no enquiry” cases and ruled that in either cases, the Tribunal have jurisdiction to go into the merits of the case on the basis of evidence adduced before it by the parties. Reference can be made to the precedent in Motipur Sugar Factory Pvt. Ltd. (1965 (2) LLJ 162) where the employer had held no enquiry at all before the dismissal and, therefore, adduced evidence to justify its action before the Tribunal, which decision was upheld. The Apex Court discarded the plea on behalf of

the workman that since no enquiry at all had been held by the employer, it had no right to adduce evidence to justify its stand before the Tribunal. In Ritz Theatre (1962 (11) LLJ 498) it was ruled by the Supreme Court that the Tribunal would be justified to go to the merits of the case and decide for itself on the basis of the evidence adduced whether the charges have indeed been made out. It announced that it would neither be fair to the management nor fair to the workman himself in such a case that the Tribunal should refuse to take the evidence and thereby drive the management to pass through the whole process of holding the enquiry all over again. Reference can also be made to the precedent in Bharat Sugar Mills Ltd. (1961 (11) LLJ 644).

19. In Delhi Cloth and General Mills Company (1972 (1) LLJ 180), Apex Court considered the catena of decisions over the subject and laid down the following principles :

“(1) If no. domestic enquiry had been held by the management, or if the management makes it clear that it does not rely upon any domestic enquiry that may have been held by it, it is entitled to straightaway adduce evidence before the Tribunal justifying its action. The Tribunal is bound to consider that evidence. so adduced before it, on merits, and give a decision thereon. In such a case, it is not necessary for the Tribunal to consider the validity of the domestic enquiry as the employer himself does not rely on it.

(2) If a domestic enquiry had been held, it is open to the management to rely upon the domestic enquiry held by it, in the first instance, and alternatively and without prejudice to its plea that the enquiry is proper and binding, simultaneously adduce additional evidence before the Tribunal justifying its action. In such a case no inference can be drawn, without anything more, that the management has given up the enquiry conducted by it.

(3) When the management relies on the enquiry conducted by it, and also simultaneously adduces evidence before the Tribunal, without prejudice to its plea that the enquiry proceedings are proper, it is the duty of the Tribunal, in the first instance, to consider whether the enquiry proceedings conducted by the management, are valid and proper. If the Tribunal is satisfied that the enquiry proceedings have been held properly and are valid, the question of considering the evidence adduced before it on merits, no longer survives. It is only when it holds that the enquiry proceedings have not been properly held, that it derives jurisdiction to deal with the merits of the dispute and in such a case it has to consider the evidence adduced before it by the management and decide the matter on the basis of such evidence.

(4) When the domestic enquiry has been held by the management and the management relies on the same, it is open to the latter to request the Tribunal to try the validity of the domestic enquiry as a preliminary issue and also ask for an opportunity to adduce evidence before the Tribunal, if the finding on the preliminary issue is against the management. However, elaborate and cumbersome the procedure may be, under such circumstances, it is open to the Tribunal to deal, in the first instance, as a preliminary issue the validity of the domestic enquiry. If its finding on the preliminary issue is in favour of the management, then no additional evidence need be cited by the management. But, if the finding on the preliminary issue is against the management, the Tribunal will have to give the employer an opportunity to cite additional evidence and also give a similar opportunity to the employee to lead evidence contra, as the request to adduce evidence had been made by the management to the Tribunal during the course of the proceedings and before the trial has come to an end. When the preliminary issue is decided against the management and the latter leads evidence before the Tribunal, the position, under such circumstances, will be, that the management is deprived of the benefit of having the finding of the domestic tribunal being accepted as *prima facie* proof of the alleged misconduct. On the other hand, the management will have to prove, by adducing proper evidence, that the workman is guilty of misconduct and that the action taken by it is proper. It will not be just and fair either to the management or to the workman that the Tribunal should refuse to take evidence and thereby ask the management to take a further application, after holding a proper enquiry, and deprive the workman of the benefit of the Tribunal itself being satisfied, on evidence adduced before it, that he was or was not guilty of the alleged misconduct.

(5) The management has got a right to attempt to sustain its order by adducing independent evidence before the Tribunal. But the management should avail itself of the said opportunity by making a suitable request to the Tribunal before the proceedings are closed. If no such opportunity has been available of, or asked for by the management, before the proceedings are closed, the employer can make no grievance that the Tribunal did not provide such an opportunity. The Tribunal will have before it only the enquiry proceedings and it has to decide whether the proceedings have been held properly and the findings recorded therein are also proper.

(6) If the employer- relies only on the domestic enquiry and does not simultaneously lead additional evidence or ask for an opportunity during the

pendency of the proceedings to adduce such evidence, the duty of the Tribunal is only to consider the validity of the domestic enquiry as well as the finding recorded therein and decide the matter. If the Tribunal decides that the domestic enquiry has not been held properly, it is not its function to invite *suo moto* the employer to adduce evidence before it to justify the action taken by it.

(7) The above principles apply to the proceedings before the Tribunal, which have come before it either on a reference under Section 10 or by way of an application under Section 33 of the Act.

20. Keeping in view the proposition laid by the Apex Court in *Delhi Cloth and General Mills Company* (supra), the Parliament inserted section 11-A in the Act, which came into force w.e.f. 15<sup>th</sup> of December, 1971. In the statement of objects and reasons for inserting section 11-A, it was stated :

“In *Indian Iron and Steel Company Limited and Another Vs. Their Workmen* (AIR 1958 S.C. 130 at p.138), the Supreme Court, while considering the Tribunal’s power to interfere with the management’s decision to dismiss, discharge or terminate the services of a workman, has observed that in case of dismissal on misconduct, the Tribunal does not act as a court of appeal and substitute its own judgment for that of the management and that the Tribunal will interfere only when there is want of good faith, victimization, unfair labour practice, etc., on the part of the management.

2. The International Labour Organisation, in its recommendation (No.119) concerning ‘Termination of employment at the’ initiative of the employer’ adopted in June 1963, has recommended that a worker aggrieved by the termination of his employment should be entitled to appeal against the termination among others, to a neutral body such as an arbitrator, a court, an arbitration committee or a similar body and that the neutral body concerned should be empowered to examine the reasons given in the termination of employment and the other circumstances relating to the case and to render a decision on the justification of the termination, The International Labour Organisation has further recommended that the neutral body should be empowered (if it finds that the termination of employment was unjustified) to order that the worker concerned, unless reinstated with unpaid wages, should be paid adequate compensation or afforded some other relief.

3. In accordance with these recommendations, it is considered that the Tribunal’s power in an adjudication proceeding relating to discharge or

dismissal of a workman should not be limited and that the Tribunal should have the power, in cases wherever necessary to set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit or give such other reliefs to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require. For this purpose, a new Section 11-A is proposed to be inserted in the Industrial Disputes Act, 1947 .....”.

21. After insertion of section 11-A, the Apex Court summed up the law in the case of Firestone Tyre and Rubber Company (1973 (1) LLJ 278) in the following propositions :

“(1) The right to take disciplinary action and to decide upon the quantum of punishment are mainly managerial functions, but if a dispute is referred to a Tribunal, the latter has power to see if action of the employer is justified.

(2) Before imposing the punishment, as employer is expected to conduct a proper enquiry in accordance with the provisions of the Standing Orders, if applicable, and principles of natural justice. The enquiry should not be an empty formality.

(3) When a proper enquiry has been held by an employer, and the finding of misconduct is a plausible conclusion flowing from the evidence, adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgement over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified only when the findings arrived at in the enquiry are perverse or the management is guilty of victimization, unfair labour practice or malafide.

(4) Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, had to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action, and it is open to the employee to adduce evidence contra.

(5) The effect of an employer not holding an enquiry is that the Tribunal would not have to consider only whether there was a prima facie case. On the other hand, the issue about the merits of the impugned order of dismissal or discharge is at large before the Tribunal and the latter, on the evidence adduced before it, has to decide for itself whether the misconduct alleged is proved. In such cases, the point about the exercise of managerial functions

does not arise at all. A case of defective enquiry stands on the same footing as no enquiry.

(6) The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only, if no enquiry has been held or after the enquiry conducted by an employer is found to be defective.

(7) It has never been recognized that the Tribunal should straightaway, without anything more, direct reinstatement of a dismissed or discharged employee, once it is found that no domestic enquiry has been held or the said enquiry is found to be defective.

(8) An employer, who wants to avail himself of the opportunity of adducing evidence for the first time before the Tribunal to justify his action, should ask for it at the appropriate stage. If such an opportunity is asked for, the Tribunal has no power to refuse. The giving of an opportunity to an employer to adduce evidence for the first time before the Tribunal is in the interest of both the management and the employee and to enable the Tribunal itself to be satisfied about the alleged misconduct.

(9) Once the misconduct is proved either in the enquiry conducted by an employer or by the evidence placed before a Tribunal for the first time, punishment imposed cannot, be interfered with by the Tribunal except in cases where the punishment is so harsh as to suggest victimization.

(10) In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in *The Management of Panitole Tea Estate Vs. The Workmen*, within the judicial decision of a Labour Court or Tribunal”.

22. Jurisdiction to interfere with the punishment is also not confined to the case where punishment is shockingly disproportionate to the act of the misconduct. The Tribunal has power of substituting its own measure of punishment in place of managerial wisdom. Change in legal position, post introduction of section 11A of the Act, has been effectively summarized in the case of *Ambassador Sky Chef* (1996 Lab. I.C. 299) wherein High Court of Bombay observed that the section gives specifically two fold powers to an industrial adjudicator: firstly, it is a virtual power of appeal against the findings of fact made by the Enquiry Officer in his report with regard to the adequacy of the evidence and conclusion on facts, and secondly, and far more important, it is the power of re-appraisal of quantum of punishment. Now no restriction lies on an industrial adjudicator to interfere with the enquiry only on four grounds, referred above. However, wide discretionary powers with the adjudicator are to be



exercised in judicial and judicious manner before it interferes with the order of misconduct or punishment.

23. With this prelude in mind, now I would turn to facts of the present controversy. As record projects, the claimant opted not to attend the enquiry proceedings. The Enquiry Officer, in the light of the evidence put forward by the Hotel, ocular as well as documentary, and on consideration of circumstances of the case, concluded that the charges against the claimant stood proved. When preliminary issue was addressed to for adjudication, aspects relating to bonafides of the Hotel in initiating the domestic enquiry were considered. It was taken into account as to whether the charges were specific and clear. Care was taken to see as to whether the Enquiry Officer followed principles of natural justice and gave reasonable opportunity to the claimant to defend himself. It was also considered as to whether the enquiry report was in consonance with the evidence produced or perverse. At the cost of repetition, it is announced that the Hotel acted bonafide and there had been no violations of principles of natural justice, in conduct of the domestic enquiry.

24. Punishment of removal/termination from service was awarded to the claimant. Question for consideration would be as to whether there are any justifications for punishment of removal/termination from service? Right of an employer to inflict punishment of discharge or dismissal is not unfettered. The punishment imposed must commensurate with gravity of the misconduct, proved against the delinquent workman. Prior to enactment of section 11-A of the Act, it was not open to the industrial adjudicator to vary the order of punishment on finding that the order of dismissal was too severe and was not commensurate with the act of misconduct. In other words, the industrial adjudicator could not interfere with the punishment as it was not required to consider propriety or adequacy of punishment or whether it was excessive or too severe. The Apex Court, in this connection, had, however, laid down in *Bengal Bhatdee Coal Company* [1963(1) LLJ 291] that where order of punishment was shockingly disproportionate with the act of the misconduct which no reasonable employer would impose in like circumstances, that itself would lead to the inference of victimization or unfair labour practice which would vitiate order of dismissal or discharge. But by enacting the provisions of section 11-A of the Act, the Legislature has transferred the discretion of the employer, in imposing punishment, to the industrial adjudicators. It is now the satisfaction of the industrial adjudicator to finally decide the quantum of punishment for proved acts of misconduct, in cases of discharge or dismissal. If the Tribunal is satisfied that the order of discharge or dismissal is not justified in any circumstances on the facts of a case, it has the power not only to set aside order of punishment and direct reinstatement with back wages, but it has also the power to imposed certain conditions as it may deem fit and also

to give relief to the workman, including award of lesser punishment in lieu of discharge or dismissal.

25. It is established law that imposing punishment for a proved act of misconduct is a matter for the punishing authority to decide and normally it should not be interfered with by the Industrial Tribunals. The Tribunal is not required to consider the propriety or adequacy of punishment. But where the punishment is shockingly disproportionate, regard being had to the particular conduct and past record, or 'is such as no reasonable employer would ever impose in like circumstance, the Tribunal may treat the imposition of such punishment as itself showing victimization or unfair labour practice. Law to this effect was laid by the Apex Court in *Hind Construction and Engineering Company Labour* [1965 (1) LLJ 462]. Likewise in *Management of the Federation of Indian Chambers of Commerce and Industry* [1971 (11) LLJ 630] the Apex Court ruled that the employer made a mountain out of a mole hill and had blown a trivial matter into one involving loss of prestige and reputation and as such punishment of dismissal was held to be unwarranted. In *Ram Kishan* [1996 (1) LLJ 982] the delinquent employee was dismissed from service for using abusive language against a superior officer. On the facts and in the circumstances of the case, the Apex Court held that the punishment of dismissal was harsh and disproportionate to the gravity of the charge imputed to the delinquent. It was ruled therein, "when abusive language is used by anybody against a superior, it must be understood in the environment in which that person is situated and the circumstances surrounding the event that led to the use of abusive language. No straight-jacket formula could be evolved-in adjudicating whether the abusive language in the given circumstances would warrant dismissal from service. Each case has to be considered on its own facts.

26. In *B.M.Patil* [1996 (11) LLJ 536], Justice Mohan Kumar of Karnataka High Court observed that in exercise of discretion, the disciplinary authority should not act like a robot and justice should be moulded with humanism and understanding. It was assess each case on its own merit and each set of fact should be decided with reference to the evidence recording the allegation, which should be basis of the decision. The past conduct of the worker may be a ground for assuming that he might have a propensity to commit the misconduct and to assess the quantum of punishment to be imposed In that case a conductor of the bus was dismissed from service for causing revenue loss of 50p to the employer by irregular sale of tickets. It was held that the punishment was too harsh and disproportionate to the act of misconduct.

27. After insertion of section 11-A of the Act, the jurisdiction to interfere with the punishment is there with the Tribunal, who has to see whether punishment imposed by the employer commensurate with the gravity of the act

of misconduct. If it comes to the conclusion that the misconduct is proved, it may still hold that the punishment is not justified because misconduct alleged and proved is such as it does not warrant punishment of discharge or dismissal and where necessary, set aside the order of discharge or dismissal and direct reinstatement with or without any terms or conditions as it thinks fit or give any other relief, including the award of lesser punishment, in lieu of discharge or dismissal, as the circumstance of the case may warrant. Reference can be made to a precedent in *Sanatak Singh* [1984 Lab. I.C.817]. The discretion to award punishment lesser than the punishment of discharge or dismissal has to be judiciously exercised and the Tribunal can interfere only when it is satisfied that the punishment imposed by the management is highly disproportionate to the decree of the guilt of the workman. Reference can be made to the precedent in *Kachraji Motiji Parmar* [1994 (11) LLJ 332]. Thus it is evident that the Tribunal has now jurisdiction and power of substituting its own measure of punishment in place of the managerial wisdom, once it is satisfied that the order of discharge or dismissal is not justified. On facts and in the circumstances of a case, Section 11A of the Act specifically gives two folds powers to the Industrial Tribunal, first is virtually the power of appeal against findings of fact made by the Enquiry Officer in his report with regard to the adequacy of the evidence and the conclusion on facts and secondly of foremost importance, is the power of reappraisal of quantum of punishment.

28. Power to set aside order of discharge or dismissal and grant relief of reinstatement or lesser punishment is not untramaled power.' This power has to be exercised only when Tribunal is satisfied that the order of discharge or dismissal was not justified. This satisfaction of the Tribunal is objective satisfaction and not subjective one. It involves application of the mind by the Tribunal to various circumstances like nature of delinquency committed by the workman, his past conduct, impact of delinquency on employer's business, besides length of service rendered by him. Furthermore, the Tribunal has to consider whether the decision taken by the employer is just or not. Only after taking into consideration these aspects, the Tribunal can upset the punishment imposed by the employer. The quantum of punishment cannot be interfered with without recording specific findings on points referred above. No indulgence is to be granted to a person, who is guilty of grave misconduct like cheating, fraud, misappropriation of employers fund, theft of public property etc. A reference cannot be made to the precedent in *Bhagirath Mal Rainwa* [1995 (1) LLJ 960].

29. As facts of the controversy project, the claimant absented himself from his duties for a considerable long period in an unauthorized manner. An employee is under an obligation not to absent himself from work without good cause. Absence without leave is misconduct in

industrial employment, warranting disciplinary punishment. Habitual absence from duty without leave has been made a misconduct under Model Standing Orders, framed under Industrial Employment Standing Orders Act, 1946. Likewise, industrial employers also include "absence from duty", without leave in the list of misconduct in their standing orders. Sanction of leave can be a significant defence to misconduct of absence without leave. No employee can claim leave of absence as a matter of right and remaining absent without leave will constitute violation of discipline. The fact that the claimant was continuously absent from work without leave, on account of his detention in jail for an offence, will not give an immunity to the claimant and the employer will be justified in discharging him from services, announces the Apex Court in *Burn & Company*, [1959 (1) L.L.J. 450].

30. In *Indian Iron and Steel Company Ltd.* [1958 (1) L.L.J.260] the Apex Court was confronted with a proposition as to whether provisions in the standing orders authorizing the employer to terminate services of its employee on account of absence without leave was an inflexible rule. In that matter seven workmen were absent without leave for 14 consecutive days, as they were in police custody. During police custody they applied for leave which were refused by the company and services of the workmen were terminated under relevant standing order for remaining absent without leave. The Industrial Tribunal took a view that the relevant standing order was not an inflexible rule and mere application for leave was sufficient to arrest the operation of the standing order. In appeal, though the Labour Appellate Tribunal did not maintain the award of the Tribunal on that count, yet it held that in view of the circumstances that the workmen were in custody, the company was not justified in refusing leave. When the matter reached the Apex Court, it set aside the order of the Labour Appellate Tribunal, relying its precedent in *Burn & Company Ltd.* (supra) and ruled thus :—

"It is true that the arrested men were not in a position to come to their work, because they had been arrested by the police. This may be unfortunate for them, but it would be unjust to hold that in such circumstances the company must always give leave when an application for leave is made. If a large number of workmen are arrested by the authorities in charge of law and order by raising of their questionable activities in connection with a labour dispute (as in this case), the work of the company will be paralysed if the company is forced to give leave to all of them for more or less indefinite period. Such a principle will not be just, nor will it restore harmony between labour and capital or ensure normal flow of production. It is immaterial whether the charges on which the workmen are arrested by the police are ultimately proved or not in a court of law. The

company must carry on its work and may find it impossible to do so if a large number of workmen are absent. Whether in such circumstances leave should be granted or not must be left to the discretion of the employer. It may be rightly accepted that if the workmen are arrested at the instance of the company for the purpose of victimization and in order to get rid of them on the ostensible pretext of continued absence, the position will be different. It will then be a colorable or malafide exercise of power under the relevant standing order, that however, is not the case here.”

31. Defence open to an employee, against charge of absence without leave, is that the absence was on account of circumstances beyond his control. For instance, where absence of a workman was on account of his sudden or serious illness or serious illness of a relation that would be an extenuating circumstance which the employer will have to take into consideration. However, if a workman feigns sickness in order to avoid duty by producing a false medical certificate, this would itself be a serious act of misconduct. In *Tata Engineering and Locomotive Company Ltd.*, [1990 (1) LLJ 403] the Patna High Court was addressed to a proposition where workman absented himself without leave or permission for a considerable period. After about 20 days of his absence, a memo and charge sheet was issued, notifying that a domestic enquiry would be held in the matter. The workman failed to appear in a domestic enquiry and the Enquiry Officer conducted the proceedings ex-parte. On consideration of the report of the Enquiry Officer, the Disciplinary Authority discharged him from service. Later on workman informed the management that he was arrested by the police in connection with a murder case and requested to allow him to join duty. On refusal, an industrial dispute was raised. A High Court placed reliance on the precedent in *Indian Iron & Steel Company* (supra) and *Burn & Company* (supra) and ruled that the discharge of the workman was valid and justified for continuous absence without permission or leave.

32. Absence without leave constitutes a misconduct justifying disciplinary action against the delinquent workman. Punishment can only be imposed either by complying with the procedure prescribed by the standing orders of the establishment, if any, or the rules of natural justice. Normally punishment should be inflicted after the workman has been found guilty of the misconduct, after holding a domestic enquiry. Reference can be made to *Mufatlal Narain Dass Barot* [1966 (1) LLJ 437] and *Kalika Prasad Srivastava* [1987 Lab.I.C. 307]. Quantum of punishment in case of misconduct for absence from duty without leave would depend upon the facts of each case. In order to justify the extreme penalty of discharge or dismissal, it is to be proved that the workman remained absent without leave for an inordinate long period. In

*Bokaro Steel Plant, Steel Authority of India Ltd* (2007 L.L.R. 238) removal of workman from service who remained unauthorisedly absent for a period of three months was held to be justified. In *Sushil Kumar* (2007 L.L.R. 45) it was ruled that absence, which is continuous for a long period, amounts to serious misconduct to justify dismissal from service. In *Borman* (2003 L.L.R. 364) 62 days absence of workman was held to be justified for his dismissal from service.

33. Now, it would be considered as to what punishment is appropriate to the misconduct, committed by the claimant. An employee is under an obligation not to absent himself from work place without good cause. Absence without leave is misconduct in industrial employment warranting disciplinary punishment. Habitual absence from duty without leave has also been made misconduct under CCS (Conduct) Rules, 1964. When an employee absents himself, he must have applied for and obtained leave from the employer. No employee can claim leave of absence as a matter of right and remaining absent without leave will constitute violation of discipline. Quantum of punishment for such cases would depend upon facts of each case. In order to justify extreme penalty of discharge or dismissal it is to be proved that the employee remained absent without leave for an inordinate long period or has habituated to absent himself from duty. Here in the case the Hotel has been able to project that the claimant remained absent for more than five months, without moving any application for leave. When letter dated 06.06.2006 was sent, advising him to join duties, he opted not to respond to it. Another letter dated 05.07.2006 was also not replied by him. He opted not to make a written statement of his defence, when charge-sheet was served upon him. He opted not to join the enquiry proceedings. He never explained reasons for his absence from duties. All these facts make it clear that his absence from duties was without any justification. Such an employee has no right to remain in service. Hence punishment, awarded to the claimant is found to be proportionate to his misconduct. Issue is, therefore, answered in favour of the Hotel and against the claimant.

### Issue No. III

34. In view of the foregoing discussion it is evident that removal/termination from service of the claimant, on account of his long unauthorized absence, is found to be in consonance with law and principles of natural justice. The claimant is not entitled to any relief. His claim statement is liable to be discarded, being devoid of merits. Consequently his claim statement is discarded. An award is passed, against the claimant and in favour of the Hotel. It be sent to the appropriate Government for publication.

Dated : 27.11.2013.

Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 24 जनवरी, 2014

**का.आ. 497.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डायरेक्टर जनरल, नेशनल अर्चिव्स ऑफ इंडिया, नई दिल्ली के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय. 1, दिल्ली के पंचाट (संदर्भ संख्या 204/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-01-2014 को प्राप्त हुआ था।

[सं. एल-42011/87/2012-आई आर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 24th January, 2014

**S.O. 497.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No.204/2012) of the Central Government Industrial Tribunal/Labour Court No. 1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Director General, National Archives of India, New Delhi and their workman, which was received by the Central Government on 18-01-2014.

[No. L-42011/87/2012-IR (DU)]

P. K. VENUGOPAL, Section Officer

#### ANNEXURE

**BEFORE DR. R.K. YADAV, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL  
NO. 1, KARKARDOOMA COURTS COMPLEX,  
DELHI**

#### I.D. No. 204/2012

The Secretary,  
Janvadi General Mazdoor Union,  
C/o Room No. 95, Barrack No. 1/10,  
Jam Nagar House,  
New Delhi.

.....Workman

#### Versus

The Director General  
National Archives of India,  
Janpath, New Delhi.

.....Management

#### AWARD

Claimant, who was engaged as daily wager by National Archives of India (in short the management) for different intervals, raised a demand for regularization of his

services. This demand annoyed the management. His services were abruptly dispensed with on 23-12-2010. He raised a demand on the management for reinstatement in service, which was not conceded to. Ultimately, he raised a dispute before the Conciliation Officer. Since his claim was contested by the management, conciliation proceedings ended into a failure. On consideration of failure report, so submitted by the Conciliation Officer, the appropriate Government referred the dispute to this Tribunal for adjudication vide order No. L-42011/87/2012-IR(DU), New Delhi dated 05-12-2012 with following terms :

"Whether the action of the management of National Archives of India, New Delhi in terminating services of the workman, Shri Ravi Chand on 23-12-2000 is fair and just? If not, to what relief the workman is entitled to?

2. Claim statement was filed by the claimant, namely, Shri Ravi Chand, pleading therein that he was initially engaged as daily wager by the management with effect from 24-05-2008. His services were engaged through Employment Exchange and he completed 290 days in service in each calendar year. Office of the management functions for five days in a week and to count his working days Saturdays and Sundays are to be taken into account, as contemplated by section 25B of the Industrial Disputes Act, 1947 (in short the Act). He made a request for regularization of his services, which request annoyed the management. His services were dispensed with, without assigning any reason on 23-12-2000. S/Shri Sandeep, Ranjit, Ajay, Vijay, Chandrakant and Rahul, juniors to him, were retained in service while his services were dispensed with. Action of the management in terminating his services is violative of provisions of section 25F, 25G and 25H of the Act. His seniority of service was not considered and principle of 'last come and first go' was not followed. Action of the management is illegal. He is unemployed since the date of termination of his services. He claims reinstatement in service with continuity and full back wages.

3. Claim was resisted by the management pleading that functions performed by it are regal. It has been disputed that the claimant rendered continuous service of 290 days in every calendar year. Tabular statement of the period for which the claimant worked with the management is detailed thus:

| Year      | Period of working tenure | Total days |
|-----------|--------------------------|------------|
| 2008      | 22-5-2008 - 12-09-2008   | 89 days    |
| 2008-09   | 17-11-2008 - 13-03-2009  | 88 days    |
| 2009-2010 | 06-10-2009 - 31-01-2010  | 89 days    |
| 2010      | 17-03-2010 - 25-06-2010  | 89 days    |
| 2010      | 01-07-2010 - 21-10-2010  | 89 days    |
| 2010      | 09-11-2010 - 21-12-2010  | 33 days    |



4. The management pleads that the claimant worked for 118 days in the year 2008, 119 days in the year 2009 and 240 days in the year 2010. It is wrong to assert that he completed 290 days in every calendar year, while serving with the management. Saturdays and Sundays cannot be counted in reckoning the period for which claimant worked with the management. No service of notice was required before termination of his services, pleads the management. Since all daily wagers, including the claimant, were selected as per norms, there was no issue of seniority for them. Claimant does not have claim for reinstatement in service. Claim may be dismissed, pleads the management.

5. On pleadings of the parties, following issues were settled :

- (i) Whether management performs sovereign functions and as such is not an industry?
- (ii) Whether the claimant rendered more than 240 days continuous service in the preceding 12 months from the date of termination of his services?
- (iii) As in terms of reference.

6. Claimant entered the witness box to testify facts in support of his claim. Dr. M.A. Haque detailed events on behalf of the management. No other witness was examined by either of the parties.

7. Arguments are heard at the bar. Shri B.K. Prasad, authorized representative, advanced arguments on behalf of the claimant. Shri Rajan Lal authorized representative raised submissions on behalf of the management. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:-

#### Issue No. 1

8. At the outset, Shri Rajan Lal argued that the management is not an industry within the meaning of section 2(j) of the Act. He presents that the management is custodian of records of permanent nature of Government of India. The said activity is relatable to sovereign functions and cannot be termed as industry. He concludes that there is no profit motive in maintaining records of permanent nature of Government of India, which fact dispels the contention that activities of the management fall within the ambit of industry. Contra to it, Shri Prasad argued that triple test of industry, as laid down in Bangalore Water and Sewerage Board (1978 Lab. I.C. 778) are satisfied in the present controversy. It does not lie in the mouth of the management to claim that it is not an industry.

9. When claim is made by the management that it is not an industry within the meaning of section 2(j) of the Act, it becomes expedient to consider the definition of the

term 'industry'. The Act defines the term 'industry' as follows :

“industry” means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment handicraft, or industrial occupation or avocation of workmen.”

10. The definition of "industry" is both exhaustive and inclusive. It is in two parts. The first part says that it “means any business, trade, undertaking, manufacture or calling of employers” and then goes to say that it “includes any calling, service, employment, handicraft or industrial occupation or avocation of workman.” Thus one part defined it from the stand point of the employer, and the other part from the stand point of the employees. The first part of the definition gives the statutory meaning of the industry, whereas the second part deliberately refers to several other items of industry and bring them in the definition in an inclusive way. The first part of the definition determines any industry by reference to occupation of employers in respect of certain activities viz., Business, trade, undertaking, manufacture or calling. The second part views the matter from the angle of employees and is designed to include something more in what the term primarily denotes. By this part of the definition any calling, employment, handicraft, industrial occupation or avocation of workmen is included in the concept of industry. This part gives extended connotation.

11. Gloss was put on the definition of word “industry” by the High Courts and the Apex Court time and again. The question as to what is “industry” has continuously baffled and perplexed the courts. A graph of the cases decided by the Apex Court, if plotted on the background of the expression used in two parts of the definition of “industry”, would represent rather a zig zag curve. There have been various judicial ventures in this rather volatile area of law. The decided cases show that the efforts were made to evolve test by reference to characteristics regarded as essential for constituting an activity as an “Industry”. Various cases would show that the Apex Court has been guided more by empirical rather than a strictly analytical approach. Most of the decision have centered around the expression “undertaking” used in the definition. In Bangalore Water Supply and Sewerage Board (supra) the Apex Court reviewed the earlier decisions on interpretation of the wide words encompassed in the definition and formulated positive and negative principles for identifying “industry” as enacted by clause (j) of section 2 of the Act. It would be expedient to reproduce the authoritative pronouncement of the court, in the very words set out in the majority decision, handed down by Justice Krishna Iyer, which are extracted thus:

- I. “Industry” as defined in S.2(j) and explained in Banerji (AIR 1953 S.C. 58) has a wide import.

(a) Where (i) systematic activity, (ii) organized by Co-operation between employer and employee (the direct and substantial element is chimerical) (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss i.e. making, on a large scale prasad or foods) prima facie, there is an “industry” in that enterprise.

(b) Absence of profit motive or gainful objective is irrelevant be the venture in the public, joint, private or other sector.

(c) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

(d) If the organization is a trade or business it does not cease to be one because of philanthropy animating the undertaking.

II. Although section 2(j) uses words of the widest amplitude in its two limbs, the re-meaning cannot be magnified to overreach itself.

(a) “Undertaking” must suffer a contextual and associational shrinkage as explained in Banerjee and in this judgement, so also, service calling and the like. This yields the inference that all organized activity possessing the triple elements in 1(supra), although no trade or business, may still be ‘industry’ provided the nature of activity, viz. the employer-employee basis, bears resemblance to what we find in trade or business. This takes into the fold ‘industry’ undertaking, calling and services, adventure,” analogous to the carrying on the trade or business”. All features, other than the methodology of carrying on the activity viz in organizing the co-operation between employer and employee, may be dissimilar. It does not matter, if on the employment terms there is analogy.

III. Application of these guidelines should not short of their logical reach by invocation of creeds, cults or inner sense of incongruity or outer sense of motivation for or resultant of the economic operations. The ideology of the Act being industrial peace, regulation and resolution of industrial disputes between employer and workmen, the range of their statutory ideology must inform the reach of the statutory definition. Nothing less, nothing more.

(a) The consequences are (i) profession, (ii) clubs (iii) education institutions, (iv) co-operatives (v) research institutes, (vi) charitable projects and (vii) other kindred adventures, if they fulfil the triple tests listed in 1(supra), cannot be exempted from the scope of section 2(j).

(b) A restricted category of professions, clubs, co-operatives and even gurukulas and little research labs may qualify for exemption if in simple ventures, substantially, and going by the dominant nature criterion, substantively no employees are entertained but in menial matters, marginal employees are hired without destroying the non employee character of the unit.

(c) If, in a pious or altruistic mission many employ themselves, free or for small honoraria of like return, mainly drawn by sharing in the purpose or cause, such as lawyers volunteering to run a free legal services clinic or doctors serving in their spare hours in a free medical centre or ashramites working at the bidding of the holiness, divinity or like central personality, and the services are supplied free or at nominal cost and those who serve are not engaged for remuneration or on the basis of master and not engaged for remuneration or on the basis of master and servant relationship, then, the institution is not an industry even if stray servants, manual or technical, are hired. Such eleemosynary or like undertaking alone are exempt not other generosity, compassion, developmental passion or project.

IV. The dominant nature test:

(a) Where a complex of activities, some of which qualify for exemption, other not, involves employees on the total undertaking, some of whom are not “workmen” as in the University of Delhi case (AIR 1963 S.C. 1873) or some departments are not productive of goods and services if isolated, even then, the predominant nature of the services and the integrated nature of the departments as explained in the Corporation of Nagpur (AIR 1960 S.C. 657) will be the true test. The whole undertaking will be industry although those who are not “workmen” by definition may not benefit by the status.

(b) Notwithstanding the previous clauses, sovereign functions, strictly understood (alone) qualify for exemption, not the welfare activities or economic adventures undertaken by Govt. or statutory bodies.

(c) of the Act. As projected by Shri Lal, management maintains records of permanent nature.

(d) Constitutional and competently enacted legislative provisions may remove from the scope of the all categories which otherwise may be covered thereby.

(V) We overrule *Safdarjung* (AIR 1970 S.C. 1407), *Solicitors case* (AIR 1962 S.C. 1080), *Gymkhana* (AIR 1968 S.C. 554), *Delhi University* (AIR 1963 S.C. 1873), *Dhanraj Giriji Hospital* (AIR 1975 SC 2032) and other rulings whose ratio runs counter to the principles enunciated above, and the *Hospital Mazdoor Sabha* (AIR 1960 SC 610) is hereby rehabilitated.”

12. Principles laid down in *Bangalore Water Supply & Sewerage Board* (supra) hold ground. Therefore, the controversy raised will be adjudicated in view of the law laid by the Apex Court in the precedent referred above. The management agitates that it is not an industry. The view point held by the management is that no profit motive activities are being carried on by it. No business is being run, hence the management cannot be termed as an “industry”. Except the facts referred above, the management nowhere projects any other factors to lay emphasis on the fact that it is not an ‘industry’.

13. Whether maintenance of records of permanent nature of the Government of India would fall within the ambit of material services to the society? Legal precedents would enlighten us. In *Ahmedabad Textile Industry’s Research Association* [1960 (2) LLJ 720] the association was established to carry on research with respect to the textile industry with a view to secure greater efficiency, rationalization and reduction of cost, which were “material services” to the textile industry hence the association answered the definition of industry. But in *Safdarjung Hospital case* (supra) it was not held to be an industry because it was a non-profit making body and its work was in the nature of training, research and treatment. In *Indian Standard Institute* [1966 (1) LLJ 33] the Apex Court suggested that in order to be recognized as an undertaking analogous to trade or business, the activity must be an economical activity in the sense that it is productive of material goods or material services. In *Bangalore Water Supply and Sewerage Board* (supra), the Apex Court laid down that an activity systematically or habitually undertaken for production or distribution of goods for rendering material services to the community at large or a part of such community with the help of employees is an undertaking. An ‘industry’ thus was said to involve cooperation between the employer and employees for the object of satisfying material human needs but not for oneself nor for pleasure nor necessity for profit. Lack of business and profit motive or capital investment would not take out an activity from the sweep of ‘industry’, if other conditions are satisfied. It is the activity in question which attracts the definition and absence of investment of any capital or the fact that the activity is conducted for profit motive or not, would not make material difference. Conversely mere existence of profit motive will not necessarily convert the activity into “industry” if other tests are not satisfied.

14. One may project that the management carry out sovereign functions hence it cannot be termed as an industry. Therefore it is expedient to know as to what are regal and sovereign functions of the State which may qualify for exemption from the ambit of the definition of word “industry”? Regal powers of the State has acquired a definite connotation, which can be described as “administration of justice, maintenance of order, repression of crime, security of borders from external aggression and legislative powers, as among the primary and inalienable functions of a Constitutional Government”. In *Corporation of City of Nagpur* [1960 (1) LLJ 523] the Apex Court observed that it could not have been in contemplation of the legislature to bring in the regal functions of the State within the definition of “industry” and to confer jurisdiction on Industrial Tribunal to decide disputes in respect thereof. The activities of the Government which can be properly described as regal or sovereign activities, are therefore, outside the scope of industry. In *Hospital Mazdoor Sabha* [1960 (1) LLJ 251] the Supreme Court adumbrated the test: can such activity be carried on by a private individual or group of individuals? The answer to this is : if a business or activity could not be carried on by a private individual or group of individuals, it could not be an industry, while if it could be, it might fall within the scope of “industry”. This test was reiterated in *Corporation of City of Nagpur* (supra) but rejected in *Gymkhana Club* [1967 (II) LLJ 720]. In *Bangalore Water Supply and Sewerage Board* (supra) the Apex Court observed “\*\*\* sovereign functions, strictly understood, (alone) qualify for exemption, not the welfare activities or economic adventures undertaken by Government or statutory bodies. Even in departments discharging sovereign functions, if there are units, which are “industry” and they are substantially severable, they can be considered to come within section 2(j)”. In *Chief Conservator of Forests* [1996 (1) LLJ 1223] the above proposition was reiterated where in it was observed “\*\*\* even within the wider circle of sovereign function, there may be an inner circle encompassing some units which could be considered as “industry”, if substantially severable”.

15. In *Physical Research Laboratory* [1997 (2) LLJ 625] the Apex Court held that the Physical Research Laboratory is not an ‘industry’ because it is not engaged in an activity which can neither be called business, trade or manufacturing nor it is an undertaking analogous to business or trade. It is not engaged in commercial or industrial activity and cannot be described as an economic venture or commercial enterprise as it is not its objective to produce and discharge services which would satisfy wants and needs of consumer community. It is not rendering any services to others. It is engaged in pure research in space science.

16. While reaching the conclusion, referred above, the Apex Court relied observations made in Bangalore Water Supply (supra) with respect to research institutes, which observations are extracted thus :

“Does research involve collaboration between employer and employee ? It does. The employer is the institution, the employees are the scientists, para-scientists and other personnel. Is scientific research service ? Undoubtedly it is. Its discoveries are valuable contributions to the wealth of the nation. Such discoveries may be sold for a heavy price in the industrial or other markets. Technology has to be paid for and technological inventions and innovations may be patented and sold. In our scientific and technological age nothing has more cash value, as intangible goods and invaluable services, than discoveries. For instance, the discoveries of Thomas Alva Edison made him fabulously rich. It has been said that his brain had the highest cash value in history for he made the world vibrate with the miraculous discovery of recorded sound. Unlike most inventors, he did not have to wait to get his reward in heaven; he received it munificently on this grateful and grateful earth thanks to conversion of his inventions into, money a plenty. Research benefits industry. Even though a research institute may be a separate entity disconnected from the many industries which funded the institute itself, it can be regarded as an Organisation, propelled by systematic activity, modelled on co-operation between employer and employee and calculated to throw up discoveries and inventions and useful solutions which benefit individual industries and the nation in terms of goods and services and wealth. It follows that research institutes, albeit run without profit-motive, are industries”.

17. In the light of the above legal proposition, facts of the present controversy are to be scanned. As claimed by the management, it is custodian of records of permanent nature of Government of India and as such, functions performed by it are sovereign and regal. When called upon to explain as to whether management carried out welfare functions, Shri Lal had to cut a sorry figure. Admittedly, the functions performed by the management do not fall within the ambit of administration of justice, maintenance of order, repression of crime, security of borders from external aggression and legislative powers of the State. Activities carried out by the management cannot be described as regal or sovereign activities, since such activities could be carried out by private individuals or group of individuals.

18. As projected by Shri Lal, management maintains records of permanent nature of Government of India. It

engages casual labours to maintain such records, besides its permanent employees. Functions of maintenance of records of permanent nature are carried out with the help of casual labours. Its activities are systematic, performed with co-operation between the management and its employees. Activities performed by the management renders service to the community at large. Therefore, it is evident that the triple test of industry as propounded in Bangalore Water and Sewerage Board (supra) stand satisfied in the present. It does not lie in the mouth of the management to claim that it does not fall within the ambit of industry as defined in section 2(j) of the Act. Mere absence of profit motive will not necessarily push the activity out of the pale of industry, as defined by the Act. Resultantly, it is concluded that activities performed by the management falls within the ambit of industry as defined under section 2(j) of the Act. The issue is, therefore, answered in favour of the claimant and against the management.

## Issue No. 2

19. Claimant unfolds in his affidavit Ex. WW1/A that he was initially engaged by the management on 24-05-2008 as a daily wage through employment exchange. He completed more than 240 days in each calendar year. He requested for regularization of his services, which act annoyed the management and his services were terminated on 23-12-2010. Dr. M. A. Haque presents that the claimant never completed 290 days continuous service in any calendar year. According to him, he rendered 89 days services from 22-05-2008 to 12-09-2008, 88 days from 17-05-2008 to 13-05-2009, 89 days service from 06-10-2009 to 31-01-2010, 89 days from 17-03-2010 to 25-03-2010, 89 days from 01-07-2010 to 25-03-2010, 89 days from 01-07-2010 to 21-10-2010 and 33 days service from 09-11-2010 to 21-12-2010. However, he concedes that in the year 2010, claimant rendered continuous service of 240 days.

20. An employer may discharge a portion of his labour force as surplusage in a running or continuing business for variety of reasons, e.g., for economy, convenience, rationalization in industry, installation of a new labour saving machinery etc. The Act defines “termination by the employer of the service of a workman for any reasons whatsoever”, except the categories exempted in sub-section 2(oo), to be retrenchment. The definition of the term “retrenchment”, as enacted by the Act, is extracted thus:

“(oo) “retrenchment” means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

(a) voluntary retirement of the workman; or



- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (bb) termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
- (c) termination of the services of a workman on the ground of continued ill-health”.

21. Definition of retrenchment is very wide and in two parts. The first part is exhaustive, which lays down that retrenchment means the termination of the service of a workman by the employer “for any reason whatsoever” otherwise than as a punishment inflicted by way of disciplinary action. Thus main part of the definition itself excludes the termination of service, as a measure of punishment inflicted by way of disciplinary action from the ambit of retrenchment. The second part further excludes (i) voluntary retirement of the workman, or (ii) retirement of workman on reaching the age of superannuation, or (iii) termination of the service of a workman as a result of non-renewal of contract of employment, or (iv) termination of contract of employment in terms of a stipulation contained in the contract of employment in that behalf, or (v) termination of service on the ground of continued ill health of the workman. Reference can be made to the precedents in *Avon Services (Production Agencies) (Pvt.) Ltd.* [1979 (I) LLJ 1] and *Mahabir* [1979 (II) LLJ 363].

22. Section 25F of the Act lays down conditions pre-requisite to retrenchment, which are as follows :

- (i) There should be one month’s notice in writing to the workman concerned.
- (ii) The notice should specify the reasons for retrenchment.
- (iii) The period of one month’s notice should have expired before retrenchment is enforced, or the workman has been paid in lieu of such notice the wages for the period.
- (iv) The workman has been paid retrenchment compensation which should be equivalent to 15 days’ average pay for every one years’ service or any part thereof provided it exceeds six months.
- (v) The notice is also given to the appropriate Government.

23. For seeking protection under section 25-F of the Act an employee should be in continuous service under

an employer for not less than one year. Continuous service for a period of one year may include period of interruption on account of sickness or authorized leave of accident or strike, which is not illegal or lockout or cessation of work which is not due to any fault on the part of the workmen, as enacted by provisions of sub-section (1) section 25B of the Act. Sub-section (2) of the said section introduces a fiction to the effect that even if a workman is not in “continuous service” within the meaning of clause (1) for a period of one year or six months, he shall be deemed to in continuous service for that period under an employer if he has actually worked for the days specified in clauses (a) and (b) thereof. In *Vijay Kumar Majoo* (1968 Lab.I.C. 1180) it was held that one year’s period contemplated by sub-section (2) furnished a unit of measure and if during that unit of measure the period of service actually rendered by the workman is 240 days, then he can be considered to have rendered one year’s continuous service for the purpose of the section. The idea is that if within a unit period of one year a person had put in atleast 240 days of service, then he must get the benefit conferred by the Act. Consequently, an enquiry has to be made to find out whether the workman actually worked for not less than 240 days during the period of 12 calendar months immediately preceding the retrenchment.

24. In *Ramakrishna Ramnath* [1970 (2) LLJ 306], Apex Court announced that when a workman renders continuous service of not less than 240 days in 12 calendar months, he is deemed to have completed one years’ service in the industry. It would be expedient to reproduce observations made by the Apex Court in that regard, which are extracted thus :

“Under Section 25-B a workman who during the period of 12 calendar months has actually worked in an industry for not less than 240 is to be deemed to have completed One year’s service in the industry. Consequently an enquiry has to be made to find out whether the workman had actually worked for not less than 240 days during period of 12 calendar months immediately preceding the retrenchment. These provisions of law do not show that a workman after satisfying the test under Section 25B has further to show that he has worked during all the period he has been in the service of the employer for 240 days in the years”.

25. Interruption of service occurred during the course of job has to be included in uninterrupted services. Fiction under section 25-B of the Act will operate if workmen has actually worked for 240 days in a calendar year. The explanation appended to section 25-B of the Act specifically includes the days on which workman was laid off under an agreement or he has been on leave with full wages, or he has been absent due to temporary disablement

caused by accident arising out of and in the course of his employment and in the case of a female, maternity leave, under the expression 'actually worked' used under sub-section (2) of section 25-B of the Act. Question for consideration would be as to whether the words 'actually worked' would not include holidays, Sunday and Saturdays for which full wages are paid. The Apex Court was confronted with such a proposition in *American Express Banking Corporation* [1985 (2) LLJ 539], wherein it was ruled that the expression 'actually worked under the employer', cannot mean those days only when the workman worked with hammer, sickle or pen, but necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. The Court ruled that Sundays and other holidays, would be comprehended in the words 'actually worked' and it countenanced the contention of the employer that only days which are mentioned in the explanation should be taken into account for the purpose of calculating the number of days on which the workman had actually worked though he had not so worked and no other days. The Court observed that the explanation is only clarificatory, as all explanations are, and cannot be used to limit the expanse of the main provision. Precedent in *Lalappa Lingappa* [1981 (1) LJ 308] was distinguished by the Apex Court in the case referred above. The precedent was followed in *Standard Motor Products of India Ltd.* [1986 (1) LLJ 34]. Thus, it is crystal clear from the law laid above that Sundays and holidays shall be included in computing continuous service under section 25-B of the Act.

26. In order to ascertain quantum of days for which the claimant rendered service in the year 2008 and 2009, the Tribunal is saddled with a responsibility to scan facts testified by the claimant as well as Dr. Haque. Though the claimant projects that he had rendered continuous service of 240 days in the year 2009, yet he had not produced any document to substantiate that fact. His ocular evidence, unfolded by the claimant in that regard, does not get any corroboration from any other cogent evidence. On the other hand, Dr. Haque details the period for which the claimant worked with the management in 2008 and 2009. His testimony gets support from the record relating to engagement of casual labours by the management. Photocopies of Orders dated 03-03-2008, 13-05-2008, 29-09-2008, 25-09-2009, 16-03-2010, 29-06-2010 and 08-11-2010 are placed over the record to project names of daily wagers engaged by the management from time to time. Record relating to payment of wages to the daily wagers, engaged by the management, has also been placed before this Tribunal. When that record is scrutinized, it came to light that the claimant was engaged for a period of 118 days in the year 2008 and 119 days in 2009.

27. Period of service rendered by the claimant in the year 2008 and 2009 nowhere includes Sundays and holidays. In a year an employee may get 52 weekly offs, besides three national holidays. In case 52 weekly offs and 3 national holidays are added to the period for which the claimant rendered services to the management, even in that situation, claimant had not been able to project that he rendered continuous service of 240 days in 2008 and 2009, to avail benefits of provisions of section 25F of the Act. However Dr. Haque makes an admission that the claimant rendered continuous service of 240 days in the year 2010. Thus it is clear that there is no dispute that in the year 2010, the claimant rendered continuous service of one year, as contemplated by section 25-B of the Act. The issue is answered accordingly, in favour of the claimant.

### Issue No. 3.

28. As admitted by Dr. Haque in his testimony, the claimant had rendered continuous service of 240 days in the calendar year 2010. He was engaged for the last time for a period of 89 days, vide order dated 08-11-2010. However, he was bade farewell on 21-12-2010, prior to expiry of period of 89 days. It is not the case of the management that one month's notice or pay in lieu thereof with reasons specifying the cause of retrenchment was given to the claimant. It is also not pointed out by Dr. Haque that retrenchment compensation, as contemplated by section 25F of the Act, was given.

29. It is not the case that the claimant reached the age of superannuation or sought voluntary retirement. No evidence was brought to show that he was employed for a fixed term of contract and his services came to an end on non-renewal of contract of employment. It was not asserted that his services were terminated on the ground of continued ill-health. Neither services of the claimant were done away as punishment for a domestic action nor action of the management falls within the category exempted under second limb of section 2(oo) of the Act. Thus it is obvious that termination of services of the claimant, for any other reason, amounts to retrenchment, as defined by clause (oo) of section 2 of the Act.

30. The claimant had rendered continuous service for a period of one year, as contemplated by section 25-B of the Act. According to him, retrenchment compensation was not paid, which fact was not dispelled by the management. The management was under an obligation to pay him compensation for retrenchment, when his services were dispensed with. Payment of retrenchment compensation is a condition precedent to a valid order of retrenchment. Precedents in *Bombay Union of Journalists* [1964 (1) LLJ 351], *Adaishwar Laal* [1970 Lab.I.C. 936] and *B.M Gupta* [1979 (1) LLJ 168] announce that subsequent payment of compensation can not validate an invalid order of retrenchment.

31. The claimant deposed that his services were terminated by the management on 21-12-2010 without any notice. Out of facts unfolded by the claimant, it stand crystallized that neither notice nor pay in lieu thereof nor retrenchment compensation was paid to him by the management. Services of the claimant were retrenchment without payment of notice pay and retrenchment compensation. Act of termination of services of the claimant is violative of provisions of section 25F of the Act. When act of terminating services of a workman is illegal, normal rule is to order reinstatement in service.

32. There may be exceptional circumstances which makes it impossible or wholly inequitable vis-a-vis employer and the workman to direct reinstatement in service. When employer loses confidence in a workman or retention of the workman would lead to apprehension of breach of security, in such a situation there is vestige of discretion available with the Tribunal to make appropriate consequential orders. In exceptional circumstances, an industrial adjudicator has discretion to give such other relief to the workman as it may deem fit, in lieu of his reinstatement in service.

33. In *Uma Devi* [2006 (4) SCC 1] the Apex Court considered the proposition as to whether the person who got employment, without following of a regular procedure or even from the back door or on daily wages can be ordered to be made permanent in their posts, to prevent regular recruitment to the posts concerned. Catena of decisions over the subject were considered and the court declined the submissions of the workmen to be made permanent on the posts which were held by them temporary or ad-hoc capacity for a fairly long spell. The Court ruled thus :

“With respect, why should the State be allowed to depart from the normal rule and indulge in temporary employment in permanent posts? This Court, in our view, is bound to insist on the State making regular and proper recruitments, and is bound not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment. The direction to make permanent the distinction between regularization and making permanent, was not emphasized here—can only encourage the State, the model employer, to flout its own rules and would confer undue benefits on a few at the cost of many waiting to compete. With respect the directions made in *Piara Singh* [1992 (4) SCC 118] is to some extent inconsistent with the conclusion in para 45 of the said judgement therein. With great respect, it appears to us that the last of the directions clearly runs counter to the constitutional scheme of employment recognized in the earlier part of the decision. Really, it cannot be said that this decision has laid down the

law that all ad-hoc temporary or casual employees engaged without following a regular recruitment procedure should be made permanent”.

34. In *P. Chandra Shekhara Rao and Others* [2006 (7) SCC 488] the Apex Court referred *Uma Devi's Case* (Supra) with approval. It also relied the decision in *Uma Rani* [2004 (7) SCC 112] and ruled that no regularization is permissible in exercise of statutory powers conferred in Article 162 of the Constitution, if the appointments have been made in contravention of the statutory rules. In *Somveer Singh* [2006 (5) SCC 493] the Apex Court ruled that appointment made without following due procedure cannot be regularized. In *Indian Drugs & Pharmaceuticals Ltd.* [2007 (1) SCC 408] the Apex Court reiterated the law and announced that the rules of recruitment can not be relaxed and court can not direct regularization of temporary employees de hors the rules, nor can it direct continuation of service of a temporary employee (whether called a casual, ad-hoc or daily rated employee) or payment of regular salaries to them.

35. In *Uma Devi* (supra) it was laid that "when a person enters a temporary employment or get engagement as contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequence of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed for the post, when an appointment to the post could be made only by following a proper procedure or selection in any concerned cases, in consultation with the public service commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek relief of being made permanent in the post. In view of those precedent neither continuance nor regularization of services of the claimants can be ordered, since it would amount to back door entry into Government job".

36. When facts of the present controversy are scanned, it came to light that the claimant was engaged through employment exchange. His name was sponsored time and again to the management when it was in need of engaging casual employees. Thus, it is crystal clear that engagement of the claimant by the management was in consonance with the instructions issued by the Government of India in that regard. Engagement of the claimant as casual labour cannot be termed as de hors the rules. Above precedents do not come to the rescue of

the management. Resultantly, it is apparent that the management cannot argue that engagement of the claimant was violative of the rules and his case falls within exceptional category to refuse him reinstatement in service. Considering all these facts, I am of the considered view that the claimant has been able to project a case for reinstatement in service.

37. Though in his affidavit the claimant had made bald assertion to the effect that he is unemployed since the date of termination of his service, yet he opted not to produce any other evidence in that regard. Ocular facts testified by the claimant on that issue is found to be farther from truth. Claimant opted not to come forward with evidence to this effect that he made efforts but could not gain fresh employment. There is vacuum of evidence on the issue also as to whom (employer) he approached for employment, but failed. Considering all these facts, I am of the considered opinion that the claimant has not been able to project the case for reinstatement with full back wages. Considering all these facts, it is concluded that the claimant is entitled for reinstatement in service of the management with continuity and 20% of the back wages. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated: 20-11-2013.

Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 24 जनवरी, 2014

**का.आ. 498.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एतद्वारा पुरस्कार प्रकाशित करता है (संदर्भ संख्या 327/2011) पॉवरग्रिड कारपोरेशन ऑफ इंडिया लिमिटेड एंड एवेरेस्ट इंटरप्राइजेज, नई दिल्ली के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय. 1 दिल्ली के पंचाट (संदर्भ संख्या 327/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-01-2014 को प्राप्त हुआ था।

[सं. एल-42012/64/2011-आई आर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 24th January, 2014

**S.O. 498.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No.327/2011) of the Central Government Industrial Tribunal/Labour Court No. 1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Powergrid Corporation of India Limited

and Everest Enterprises, New Delhi and their workman, which was received by the Central Government on 18-01-2014.

[No. L-42012/64/2011-IR (DU)]

P. K. VENUGOPAL, Section Officer

#### ANNEXURE

**BEFORE DR. R.K. YADAV, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL  
NO. 1, KARKARDOOMA COURTS COMPLEX,  
DELHI**

#### I.D. No. 327/2011

Shri lakhan S/o Sh. Ghasi Ram,  
R/o H.No. 2377-B, L1 Gali No. 15,  
Sangam Vihar,  
Delhi - 110065

.....Workman

#### Versus

1. The Management of  
M/s Power Grid Corporation of India Limited,  
D-9. Qatab Institutional Area,  
Katwaria Sarai,  
Delhi - 110016.

2. M/s Everest Enterprises,  
Corporation Office, Q-60,  
Sector-12, Noida,  
Gautam Buddh Nagar (U.P.)

..... Management

#### AWARD

Power Grid Corporation of India Ltd. (in short the Corporation) awarded work of assets management, building upkeep services, housekeeping, mail management and allied services to M/s Everest Enterprises (in short the Contractor) at its complex located at Katwaria Sarai, New Delhi. To carry out its contractual obligations, the Contractor engaged Shri lakhan Singh, besides other employees. Shri Lakhan Singh rendered services to the Contractor at the premises of the Corporation from June 2007 to 2nd December 2009, Shri Lakhan Singh allegedly misbehaved with Miss Ritu Pandey, Front Desk Officer, who made a complaint against the former. Since 3rd of December 2009, Shri Lakhan Singh opted not to report for his duties. On the other hand he projected a claim that his services were dispensed with by a verbal order by the Corporation. He raised a demand for reinstatement in service of the Corporation. When his demand was dispelled, he raised a dispute before the Conciliation Officer. Since his claim was contested, conciliation proceedings ended in failure. On consideration of failure report, submitted by Conciliation Officer, the appropriate Govt. referred the dispute to this Tribunal for adjudication, vide order No. L-42012/64/2011-IR(DU) New Delhi, dated



20.09.2011, with following terms:

"Whether the action of the management of M/s Everest Enterprises, a contractor of Power Grid Corporation of India, New Delhi, in terminating the services of Shri Lakhan S/o Shri Ghasi Ram, Ex-Safai Karamchhari w.e.f. 03-12-2009, is legal and justified? What relief the workman is entitled to and from which date with consequential benefits?"

2. Claim statement was filed by Shri Lakhan Singh pleading therein that he was working with the Corporation in its housekeeping department through the Contractor since June 2007. The Corporation used to assign duties to him. The Contractor was a middle man, who was engaged by the Corporation to make payment of wages to the claimant, after receiving it from the Corporation. Neither the Corporation was registered nor the Contractor was having a licence from the Labour Department, to provide labour force to the Corporation.

3. The claimant presents that he continuously rendered services to the Corporation and completed 240 days service in every calendar year. His services were dispensed with in an illegal manner, w.e.f. 3-12-2009. No notice or pay in lieu thereof was given to him, hence action of the Corporation was violative of the provisions of section 25-F of the Industrial Disputes Act 1947 (in short the Act). His services were dispensed with by the Corporation in connivance with the Contractor. He used to render services at premises of the Corporation, who was beneficiary of his services. The contract entered into between the Corporation and the Contractor was sham and nominal. Job carried out by him was of perennial in nature, for which a contract cannot be awarded. He claims reinstatement in service in housekeeping department of the Corporation with continuity and full back wages.

4. Claim was demurred by the Corporation pleading that the claimant was an employee of a Contractor. The Corporation was having no privity of contract with the claimant. The Contractor was under an obligation to make payment of wages and other facilities to its employees. The claimant was deployed as one of the housekeepers by the Contractor, to carry out its contractual obligations, in respect of work awarded vide order dated 1-3-06. Contract was for a period of two years, which was extended for another one year. Another contract was awarded for period of two years to the Contractor, vide order dated 23-04-2009.

5. The claimant was performing duties as per instructions of the Contractor, at the site of the Corporation. Work of cleaning and sweeping was awarded to the Contractor on area basis, to be done either with the help of machinery or manually or both. The claimant was engaged by the Contractor to carry out cleaning and sweeping job.

The Corporation was the principal employer, who used to release payment in favour of the contractor on sq. feet basis of the area cleaned by the Contractor.

6. The Corporation pleads that it has registration certificate, while the Contractor has a licence to supply labour force, issued by the Regional Labour Commissioner. It has been denied that the contract between the Corporation and the Contractor was sham and nominal. The Contractor used to carry out his contractual obligations by deploying its labour force. Wages of the claimant were never paid by the Corporation. The claimant was called upon by the contractor though letters dated 2-4-10 and 13-5-10 to resume his duties but he intentionally opted not to join his duties. Claim put forward by the claimant has no substance, hence it is liable to be dismissed, pleads the Corporation.

7. The Contractor dispels the claim pleading that the claimant had not worked for 240 days, in preceding 12 months from the date of his alleged termination. The claimant committed serious misconduct, when he misbehaved with Ms. Ritu Pandey on 02-12-2009. He abandoned his services and never visited his place of duty thereafter.

8. The Contractor presents that there was a valid contract between it and the Corporation. The Contractor disputes to be a middle man. Since the claimant had abandoned his services and term of the contract, entered into between the Contractor and the Corporation, has expired hence services of the claimant automatically come to an end. Under these circumstances there was no case for giving notice or pay in lieu thereof and retrenchment compensation. The work performed by the Contractor was not of permanent in nature. The Corporation, being the principal employer, was having no liability of any sort in respect of the claimant. Since the claimant had abandoned his job, he is not entitled to any relief. His claim is devoid of merits, hence it may be dismissed.

9. On perusal of pleadings following issues were settled :

- (i) Whether the claimant committed misconduct, when he misbehaved with a female employee on 02-12-2009 ?
- (ii) Whether the claimant had abandoned his services when show cause notice was served upon him on 02-04-2010?
- (iii) As in terms of reference.

10. After settlement of issue, an application was moved by the Contractor seeking permission to prove misconduct of the claimant before the Tribunal. On hearing the parties, the application was granted and the Contractor

was allowed to prove misconduct of the claimant before the Tribunal, vide order dated 18-5-2012.

11. Instead of adducing any evidence, the Contractor absented from putting its appearance before the Tribunal hence proceeded ex-parte, vide order dated 16-11-2012.

12. The claimant has examined himself to discharge onus resting on him. Shri Mahesh Chand was examined on behalf of the Corporation. No other witness was examined by either of the parties.

13. Arguments were heard at the bar. Shri S.S.Upadhyay, authorised representative, advanced arguments on behalf of the claimant. Shri G.P. Sharma, authorised representative, raised submissions on behalf of the Corporation. None came forward to advance arguments on behalf of the Contractor. Written submissions were also filed by the claimant as well as the Corporation. I have given my careful consideration to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:

#### **Issue No. 1**

14. Onus to discharge the issue was on the Contractor. Though the Contractor sought permission from the Tribunal to prove misconduct of the claimant, since it was a case of no enquiry, yet no evidence was adduced by the contractor to establish that the claimant misbehaved with a female employee and he committed a misconduct. There had been a complete vacuum of evidence on the count. For desideratum of evidence it cannot be concluded that the claimant misbehaved with a female employee and committed a misconduct. The issue is, therefore, answered in favour of the claimant and against the Contractor.

#### **Issue No. 2 & 3**

15. Issue No.2 relates to alleged abandonment of service by the claimant, while reference order raises a issue as to whether action of terminating service of the claimant by the Contractor is legal and justified. Abandonment of service by the claimant is in contrast to alleged termination of service by the Contractor. These two issues are diametrically opposed to each other. Adjudication of one issue will negative existence of fact relating to the other. Since adjudication of these two issues are dependent on facts, which make existence of facts of the other issue highly improbable, hence these two issues would be articulated simultaneously.

16. In affidavit Ex. WW1/A, tendered as evidence, the claimant claims that he was working with the Corporation since June 2007. The Corporation was using his services though the Contractor, who was a middle man between him

and the Corporation. The Corporation was paying his salary through the Contractor. Gate pass was issued by the Corporation at the request of the Contractor. He used to mark his attendance in housekeeping department of the Corporation. He used to get his salary on wage register. He was under administrative control of the Corporation. Work, carried on by him, was of perennial nature and could not be carried through a contract worker. The Corporation was not having a registration certificate nor the Contractor was having a licence to supply labour force. The Corporation was his principal employer while the Contractor was a middle man. He was working at the premises of the Corporation. To substantiate facts unfolded by him, he relied on photocopy of identity cards, photocopy of cheques for his salary, letters dated 26-12-2008 and 24-04-2009, attendance record for June 2009 and copy of wage register from December 2008, which documents are Ex.WW1/1 to Ex.WW1/9.

17. Shri Mahesh Chand Sharma unfolds in his affidavit Ex.MW1/A tendered as evidence that the claimant, besides other employees, was deployed by the Contractor at its premises. Claimant was paid his wages and other facilities by the Contractor. The Contractor was liable to make all payment and follow labour laws, in respect of its employees. The work was awarded to the Contractor vide order dated 01-03-2006 for a period of two years, which term was extended for another period of one year. The contract was again awarded to the Contractor. for a period of two years, vide order dated 23-04-2009. The claimant was working under instructions of the Contractor at the site of the Corporation. Letters dated 02-04-2010, 13-05-2010 and 25-07-2010 were written by the Contractor to the claimant. The Contractor called the claimant to resume his duties, but in vain. He has relied on contract agreements entered into between the Corporation and the Contractor, registration certificate and licence issued in favour of the Corporation and the Contractor respectively, which documents are Ex.MW1/1 to Ex.MW1/7.

18. Whether relationship of employer and employee existed between the parties? For an answer to this proposition, it is to be appreciated as to how a contract of service is entered into. The relationship of employer and employee is constituted by a contract, express or implied between employer and employee. A contract of service is one in which a person undertakes to serve another and to obey his reasonable orders within the scope of the duty undertaken. A contract of employment may be inferred from the conduct which goes to show that such a contract was intended although never expressed and when there has, in fact, been employment of the kind usually performed by the employees. Any such inference, however, is open to rebuttal as by showing that the relation between the parties concerned was on a charitable footing or the parties were relations or partners or were directors of a limited

company which employed no staff. While the employee, at the time, when his services were engaged, need not have known the identity of his employer, there must have been some act or contract by which the parties recognized one another as master or servant.

19. In order to assess as to whether there was relationship of employer and employee between the Corporation and the Contractor, facts unfolded by the claimant and those detailed by Shri Sharma are to be appreciated. The claimant unfolds in his affidavit Ex.WW1/A that he was working with the Corporation through the Contractor, a middle man. Thus claimant projects that his services were availed by the Corporation through the Contractor. In order to assess veracity of these facts, documents brought over the record are scanned. Ex.WW1/1 is temporary gate pass issued in favour of the claimant by the authorities of Central Industrial Security Force, having its unit at the premises of the Corporation. In this document there is a column relating to name of the Contractor, which is lying blank. Ex.WW1/2 is the other gate pass which has been issued for a period of three months. In this document too column relating to name of the Contractor is also left blank. In none of these two documents it is mentioned that the claimant is an employee of the Corporation. On the other hand, the claimant projects that gate passes were issued in his favour at the instance of the Contractor. Ex.WW1/3 is another gate pass wherein column relating to name of the Contractor projects that M/s Everest Enterprises was the employer of the claimant. Cheques of wages dated 07.04.2008 and 07.05.2008, proved as Ex.WW1/7 and Ex.WW1/5, were issued in favour of the claimant by the Contractor. Letters dated 26.12.2008 and 24.07.2008, proved as Ex.WW1/6 and Ex.WW1/7, were written by the Contractor to the Corporation, requesting-renewal of gate passes in favour of its employees, wherein name of the claimant is also mentioned. Wage register Ex.WW1/9 pertains to December 2008, which was maintained by the Contractor. Ex.WW1/8 is a copy of attendance register for 30.06.2009. This document nowhere unfolds that it relates to the Corporation. The claimant recorded a writing over it purported to have been written by one Bharat Kumar, housekeeping supervisor of the Corporation. However Ex.WW1/7 highlights that Bharat Kumar is an employee of the Contractor. Thus, it is evident that the claimant forged this document to put forward a claim to the effect that his attendance was marked by an employee of the Corporation. Documents, referred above, bring it to the light of the day that the claimant was an employee of the Contractor. The Contractor used to pay wages to the claimant and exercise control over him.

20. Letters Ex. WW1/M1 and Ex.WW1/M2 were put to the claimant during the course of his cross-examination. He admitted to have received these letters. When perused, it came to light that these letters were written by the

Contractor to the claimant. In letter Ex.WW1/M1 the Contractor commands the claimant to show cause as to why disciplinary action may not be initiated against him for the misconduct committed by him, on 02-12-2009. Thus the Contractor, asserts its right to initiate disciplinary action against the claimant. EX.WW1/M2 was written by the Contractor calling upon the claimant to attend to his duties at its Noida office. These two documents point out that the Contractor had exercised rights of an employer on the claimant and commanded him to join duties at its Noida office and to show cause why disciplinary action should not be initiated against him. Therefore these documents also conclude that the claimant was an employee of the Contractor.

21. The Corporation produced copy of the wage register, furnished to it by the Contractor alongwith its bills. During the course of cross examination of Shri Mahesh Chand Sharma, the claimant used those bills and confronted Shri Sharma with bills Ex.MW1/W2 and Ex.MW1/W3 in order to show that his wages for the month of January 2008 and November 2009 were not paid. Authenticity of other wage bills was not disputed by the claimant at all. When these wage bills are scrutinised, it came to light that the Contractor paid wages to the claimant for the month of June 2007, November and December 2007, February to December 2008, March 2009 to August 2009 and October 2009. Thus it stood established over the record that wages of the claimant were paid by the Contractor for more than 21 months. At no point of time, the claimant questioned authority of the Contractor as his employer, when wages were paid to him by the latter.

22. Except his bald statement, the claimant could not bring anything over the record to project the Contractor to be a middle man. On the other hand, the Corporation brought contract agreements Ex.MW1/7 and Ex.MW1/W4 over the record to highlight that work of assets management, building upkeep services, mail management and allied services were assigned to the Contractor. When scanned these two documents were found to be genuine. Nothing emerged over the record to record a findings to the effect that administrative, managerial, financial and disciplinary control of the claimant was in the hands of the Corporation. The Contractor was pay master of the claimant, who engaged the claimant to discharge his contractual obligations with the Corporation. It doesn't lie in the mouth of the claimant to assert his employer to be an agent of the Corporation. There was no privity of contract between the Corporation and the claimant.

23. The claimant makes a claim that on 03.12.2009 he was not allowed by the Corporation as well as the Contractor to perform his job. He projects that his services were orally terminated in an illegal manner. On the other hand the claimant does not dispute receipt of letters



Ex.WW1/M1 and Ex.WW1/M2 written by the Contractor to him. In Ex.WW1/M1 it is claimed that the claimant was absent from his duties since 03-12-2009. The Contractor detailed therein that despite various requests telephonically and otherwise the claimant did not report for his duties at its Noida office. In Ex.WW1/M2 the Contractor again speaks of absence of claimant from duty. The claimant was again advised to report for duties at Noida office of the Contractor, through letter Ex.MW1/M2. When the claimant was confronted with these two letters, during course of his cross examination, he had not offered any explanation about factum of his absence from duty since 03.12.2009. His eerie silence on contents of Ex.WW1/M1 and Ex.WW1/M2 would make an ordinary prudent man to believe that the claimant is absenting from his duties since 03.12.2009.

24. As facts of the controversy project, the claimant absented himself from his duties for a considerable long period, in an unauthorized manner. An employee is under an obligation not to absent himself from work without good cause. Absence without leave is misconduct in industrial employment, warranting disciplinary punishment. Habitual absence from duty without leave has been made a misconduct under Model Standing Orders, framed under Industrial Employment Standing Orders Act, 1946. Likewise, industrial employers also include "absence from duty", without leave in the list of misconduct in their standing orders. Sanction of leave can be a significant defence to misconduct of absence without leave. No employee can claim leave of absence as a matter of right and remaining absent without leave will constitute violation of discipline. The fact that the claimant was continuously absent from work without leave, on account of his detention in jail for an offence, will not give an immunity to the claimant and the employer will be justified in discharging him from services, announces the Apex Court in *Burn & Company*, [1959 (1) L.L.J. 450].

25. In *Indian Iron and Steel Company Ltd.* [1958 (1) L.L.J.260] the Apex Court was confronted with a proposition as to whether provisions in the standing orders authorizing the employer to terminate services of its employee on account of absence without leave was an inflexible rule. In that matter seven workmen were absent without leave for 14 consecutive days, as they were in police custody. During police custody they applied for leave which were refused by the company and services of the workmen were terminated under relevant standing order for remaining absent without leave. The Industrial Tribunal took a view that the relevant standing order was not an inflexible rule and mere application for leave was sufficient to arrest the operation of the standing order. In appeal, though the Labour Appellate Tribunal did not maintain the award of the Tribunal on that count, yet it held that in view of the circumstances that the workmen were in custody, the company was not justified in refusing leave. When the

matter reached the Apex Court, it set aside the order of the Labour Appellate Tribunal, relying its precedent in *Burn & Company Ltd.* (supra) and ruled thus:-

"It is true that the arrested men were not in a position to come to their work, because they had been arrested by the police. This may be unfortunate for them, but it would be unjust to hold that in such circumstances the company must always give leave when an application for leave is made. If a large number of workmen are arrested by the authorities in charge of law and order by raising of their questionable activities in connection with a labour dispute (as in this case), the work of the company will be paralysed if the company is forced to give leave to all of them for more or less indefinite period. Such a principle will not be just, nor will it restore harmony between labour and capital or ensure normal flow of production. It is immaterial whether the charges on which the workmen are arrested by the police are ultimately proved or not in a court of law. The company must carry on its work and may find it impossible to do so if a large number of workmen are absent. Whether in such circumstances leave should be granted or not must be left to the discretion of the employer. It may be rightly accepted that if the workmen are arrested at the instance of the company for the purpose of victimization and in order to get rid of them on the ostensible 'Pretext of continued absence, the position will be different. It will then be a colorable or malafide exercise of power under the relevant standing order, that however, is not the case here."

26. Defence open to an employee, against factum of his absence without leave, is that the absence was on account of circumstances beyond his control. For instance, where absence of a workman was on account of his sudden or serious illness or serious illness of a relation that would be an extenuating circumstance which the employer will have to take into consideration. However, if a workman feigns sickness in order to avoid duty by producing a false medical certificate, this would itself be a serious act of misconduct. No such case of absence beyond control has been set up by the claimant, in the present controversy.

27. It was incumbent on the claimant to establish that he reported for his duties but the Contractor failed to allow him to resume the same. Contents of letter Ex.WW1/M2 make me to believe that in reply to Ex.WW1/M1 the claimant questioned status of the Contractor to be his employer. Instead of reporting for duties the claimant accused his employer, which act led the latter to show his anguish in letter Ex.WW1/M2. Contents of the said letter gives an inference that the claimant was not willing to join his duties with the contractor. There facts dispel claim put



forward by the claimant to the effect that his services were terminated by the contractor, in conspiracy with the Corporation. On the other hand it is stood establish that the claimant abandoned his job since 3/12/09 and opted not to report for his duties, when called upon do to so by his employer.

28. When claimant abandoned his duties and put an end to relationship of employer and employee, in such a situation in cannot be said that his services were retrenched by the contractor, No action was taken by the contractor to put an end to the service of the claimant. Provisions of sec 25-F of the Act had not come into operation, in the present controversy. There is no occasion to attribute any illegality or un-justifiability to the act of the contractor, when claimant had abandoned his services since 03.12.2009 and snapped relationship of employer and employee. Issues are accordingly answered against the claimant.

29. In view of forgoing reasons, it is evident that the claim put forward by Shri Lakhan is not maintainable. He is not entitled to any relief, not to talk of relief of reinstatement in service with continuity and back wages. His claim is discarded. An award is accordingly passed in favour of the Corporation, the contractor and against the claimant. It be sent to the appropriate Govt. for publication.

Dated: 13-01-2014

Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 24 जनवरी, 2014

**का.आ. 499.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डायरेक्टर, एनिमल क्वारंटाइन एंड सर्टिफिकेट ऑन सर्विसेज, नई दिल्ली के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. 1, दिल्ली के पंचाट (संदर्भ संख्या 134/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-01-2014 को प्राप्त हुआ था।

[सं. एल-42012/288/2010-आई आर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 24th January, 2014

**S.O. 499.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 134/2011) of the Central Government Industrial Tribunal/Labour Court No. 1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Director, Animal Quarantine and Certificate on Services, New Delhi and their workman, which was received by the Central Government on 18-01-2014.

[No. L-42012/288/2010-IR (DU)]

P. K. VENUGOPAL, Section Officer

## ANNEXURE

### BEFORE DR.R.K.YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, KARKARDOOMA COURTS COMPLEX, DELHI

I.D. No. 134/2011

Shri Mukesh  
C/o Janavadi Kamgar Mazdoor Union,  
Room No.95, Barrack No.1/10,  
Jamnagar House, Shahjahan Road,  
New Delhi -110011

...Workman

#### Versus

The Director,  
Animal Quarantine and Certificate on services,  
Delhi Gurgaon Road, Kapashera,  
New Delhi-110037

...Management

## AWARD

Quarantine certification services are provided in respect of import of livestock products into India by the Institute of Animal Quarantine and Certification Services (hereinafter referred to as the Institute). The Institute is supposed to carry out import risk analysis in respect of livestock products imported in the country. For that purpose, livestock products are inspected at entry point and live animals are kept in sheds for quarantine period of 30 days or as specified in health protocol. Live animals, when kept in sheds, are fed at quarantine stations. To clean sheds and nearby areas, the Institute engages casual labours. Shri Mukesh Kumar was engaged as safai karamchari by the Institute at intervals, in exigencies. When his services were not required, he was not engaged by the Institute. Aggrieved by that act, Shri Mukesh Kumar raised a demand for reinstatement in service of the Institute, which demand was not conceded to. He approached the Conciliation Officer for redressal of his grievances. Since the Institute contested his claim, conciliation proceedings ended into a failure. On consideration of failure report, submitted by the Conciliation Officer, the appropriate Government referred the dispute to this Tribunal for adjudication vide order No.L-42012/288/2010-IR(DU), New Delhi dated 26.04.2011 with following terms:

- “(1) Whether action of the management of Animal Quarantine and Certification Services, Kapashera, New Delhi, in termination of services of Shri Mukesh Kumar, daily wager with effect from 06.06.2008 is legal and justified? What relief the workman is entitled to?
- (2) Whether Shri Mukesh Kumar is entitled to temporary status with effect from 01.02.1993 and regularization with effect from 01.05.2007?”

2. Claim statement was filed by Shri Mukesh Kumar pleading therein that initially he was engaged on muster roll as safai karamchhari in February 1993. Copy of letter No.12032/1/96-Admn.-II of February 1993, wherein his name appears at serial No.18, projects that he has been performing his duties with the Institute since February 1993. He has been performing his duties continuously. Some artificial breaks were given in his service with the intention to deny him temporary status. His services were dispensed with by the Institute on 30.06.1999. He filed OA No.198 of 1999 before the Central Administration Tribunal (in short the CAT) which was decided on 08.12.1999, wherein following directions were issued:

“In the context of the position of law and the facts as aforesaid, OA is disposed of with the following directions:

- (i) The applicant shall have priority of re-engagement over freshers and new comers.
- (ii) Applicant should be re-engaged as soon as jobs are available and in case he has completed more than 240 days, as alleged by the applicant, he shall also be considered for conferment of temporary status in terms of instructions contained in OM dated 10.09.1993.
- (iii) No costs”.

3. Thereafter, the Institute re-engaged him but did not confer temporary status. He was discriminated in that regard, since Shri Lekh Ram, junior to him, was granted temporary status and subsequently regularized in service. 17 other workers, appointed on the very date on which he was engaged, were granted temporary status and regularized in service by the Institute. Most of them were junior to him. Instead of granting temporary status and regularizing his services, he was bade farewell by the Institute on 06.06.2008 without any notice or pay in lieu thereof. Provisions of section 25G and 25H of the Industrial Disputes Act, 1947 (in short the Act) were also violated. Retrenchment compensation was not paid to him. Since the act of termination of service was illegal and unjustified, he is entitled for reinstatement in service with continuity and full back wages.

4. Claimant asserts that he rendered continuous service of 240 days in each calendar year since the date of his initial engagement. He is entitled for grant of temporary status as per provisions of OM No.51016/2/90-Estt(C) dated 10.09.1993. He presents that the Institute may be directed to grant him temporary status and regularization of his services with effect from 01.05.2007, the date when juniors to him were regularized in service by the Institute. According to him, an award may be passed in his favour, with relief of reinstatement in service with full back wages

and grant of temporary status, besides regularization of his services.

5. Claim was demurred by the Institute pleading that the dispute referred for adjudication is not an industrial dispute, since the Institute is not an industry within the meaning of section 2(j) of the Act. The Institute has been set up as a subordinate office under the Department of Animal Husbandry, Dairying and Fisheries, Ministry of Agriculture, Government of India, New Delhi, to implement provisions for regularization of import of livestock under Livestock Importation Act, 1988. The Institute cannot be said to be providing services when it carries out quarantine and certification services in respect of livestock imported in the country. Activities carried out by the Institute cannot be called as systematic activity carried on by co-operation between employer and his workmen for production, supply or distribution of goods or services with a view to satisfy human wants or wishes. Since the Institute is not an industry, claimant is not clothed with the character of workman, as defined under section 2(s) of the Act. As such, this Tribunal has no jurisdiction to adjudicate the dispute.

6. The Institute pleads that the claimant filed a petition before the CAT to claim temporary status, which petition was disposed of vide order dated 08.12.1999. The CAT directed that in case claimant had completed more than 240 days continuous service, he should be considered for conferment of temporary status in terms of OM dated 10.09.1993. Since the claimant did not fulfill the conditions prescribed in the aforesaid office memorandum, temporary status was not granted to him. He filed another petition No.2556/2000 wherein CAT ordered on 06.12.2000 that case of the claimant be considered for grant of temporary status if he had completed required number of days as per the claim. Pursuant to the order passed by the CAT, a speaking order was passed by the Institute on 09.01.2001, declaring therein that the claimant was not entitled for grant of temporary status. He filed another petition No.1877/2001 before the CAT projecting therein that one Sanju was appointed on the post of safaiwala on 12.05.2000 in violation of order dated 08.12.1999, ignoring his claim. It was also alleged that one Lekh Ram, junior to him as muster roll casual employee, was appointed by the Institute as safaiwala. The said petition was dismissed by the CAT on 25.01.2002. Review application No.91 of 2002 was filed in OA No.1877 of 2001, which was also declined. Thus, issue for grant of temporary status and regularization of services of the claimant was finally adjudicated by the CAT and now he cannot raise that very issue. Re-agitation of the issue is barred on the principles of res-judicata.

7. The Institute claims that the claimant was never engaged as a casual labour in 1993. Document, bearing No.12032/1/96-Admn.-II of February 1993 showing name

of the claimant at serial No.18, is a forged and fabricated document. When matter was examined, it came to light that the claimant had fabricated muster roll of daily rated workers for the month of February 1997 and projected it to be muster roll for the month of February 1993 to avail benefits under the scheme for grant of temporary status. Claimant was not engaged as casual labour in the Institute after February 2001. Hence, question of termination of his services with effect from 06.06.2008 does not arise.

8. In OANo.1980/1999 filed before the CAT, claimant pleaded that he was employed with the Institute in April 1996 as casual worker on daily wages through Employment Exchange, Kamla Market, New Delhi. He further pleads therein that his services were terminated on 05.11.1996. He was again employed by the Institute for the period from 28.01.1997 to 28.02.1997 and from 01.05.1997 to 30.06.1999 with intermittent breaks. He pleads therein that his services were disengaged by the Institute with effect from 01.07.1999. Above facts belies his contention that he was engaged by the Institute in February 1993. The Institute projects that since the claimant had not rendered continuous service of 240 days in a calendar year, he was not considered for grant of temporary status, pursuant to office memorandum dated 10.09.1993. In view of these facts, there is no case for regularization of services of the claimant with effect from 01.05.2007. The Institute projects that besides its regular manpower of Group D staff in the quarantine station, daily wagers are engaged for animal management purposes from time to time as per requirement. Services of such daily wagers are dispensed with when animals are not in quarantine station. It is so done to avoid extra burden on public exchequer. Pursuant to directions of the CAT in order dated 08.12.1990, claimant was engaged with effect from May 2000 on availability of work. His services were dispensed with in September 2000 on completion of the work. He was again engaged for short duration in November and December 2000 and lastly engaged for another short spell in January and February 2001. His engagement, in compliance of order of the CAT, was for the following period:

March 2000- 6 days, June 2000- 25 days, July 2000 – 25 days, August 2000 – 21 days, September 2000 – 23 days, November 2000 – 16 days, December 2000 – 22 days, January 2001 – 23 days and February – 26 days.

9. Since the claimant was not engaged in 1993, question of conferment of temporary status as per Office Memorandum dated 10.09.1993 does not arise. Daily wager is not an official holding civil posts, hence cannot claim regularization of his appointment as a matter of right. Casual labours with temporary status are to be regularized in terms of provisions contained in office memorandum dated 10.09.1993. None of the 17 workers, as claimed by

the claimant, were regularized by the Institute in its service. The Institute presents that the claim put forward by Shri Mukesh Kumar may be discarded, being devoid of merits.

10. On pleadings of the parties, following issues were settled:

- (i) Whether the claimant rendered continuous service with the management for a period of more than 240 days in any calendar year?
- (ii) Whether management is not an industry within the meaning of clause (j) of section 2 of the Industrial Disputes Act?
- (iii) As in terms of reference.
- (iv) Relief.

11. Claimant examined himself in support of his claim. Dr. Vijay Kumar and Shri L.C. Mehra were examined on behalf of the Institute. No other witness was examined by either of the parties.

12. Arguments were heard at the bar. Shri B.K. Prasad, authorized representative, advances arguments on behalf of the claimant. Dr. S.A. Khan, authorized representative, raised submissions on behalf of the Institute. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:-

## Issue No. II

13. At the outset, Shri Khan argued that the Institute is not an industry within the meaning of clause 2(j) of the Act. He presents that the Institute keeps animals at quarantine station for a quarantine period of 30 days or as specified in health protocol prescribed by the Government of India for monitoring health status of animals, takes samples of livestock products to be tested in relevant laboratories, maintains health record of animals, collect necessary samples, carry out hematological, urine and fecal examination, takes follow up action, examine animals for infestation of ecto parasite, take steps for disinfection, vaccination, immunization for the purpose of quarantine clearance certificates etc. According to Shri Khan, these functions are sovereign functions and cannot be termed as functions of an industry. He argued that since the Institute is not an industry, the dispute referred for adjudication has not acquired status of an industrial dispute. Contra to it, Shri Prasad presents that the functions, carried out by the Institute are normal functions in the nature of systematic activity as done to pursue a trade or business. Activities performed by the Institute are being run in co-operation of the employer and its employees for production, supply and distribution of goods or services to satisfy human wants or wishes. He concludes that the Institute falls within all four corners of

the definition of industry, as contained in section 2(j) of the Act.

14. When a claim is made by the Institute that it is not an industry within the meaning of clause (j) of section 2 of the Act, it becomes expedient to consider the term 'industry'. Definition of term 'industry', as enacted by section 2(j) of the Act, is extracted thus:

"industry, means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen."

15. The definition of "industry" is both exhaustive and inclusive. It is in two parts. The first part says that it "means any business, trade, undertaking, manufacture or calling of employers" and then goes to say that it "includes any calling, service, employment, handicraft or industrial occupation or avocation of workman." Thus one part defined it from the stand point of the employer, and the other part from the stand point of the employees. The first part of the definition gives the statutory meaning of the industry, whereas the second part deliberately refers to several other items of industry and bring them in the definition in an inclusive way. The first part of the definition determines any industry by reference to occupation of employers in respect of certain activities viz., business, trade, undertaking, manufacture or calling. The second part views the matter from the angle of employees and is designed to include something more in what the term primarily denotes. By this part of the definition any calling, employment, handicraft, industrial occupation or avocation of workmen is included in the concept of industry. This part gives extended connotation.

16. Gloss was put on the definition of word "industry" by the High Courts and the Apex Court time and again. The question as to what is "industry" has continuously baffled and perplexed the courts. A graph of the cases decided by the Apex Court, if plotted on the background of the expression used in two parts of the definition of "Industry", would represent rather a zig zag curve. There have been various judicial ventures in this rather volatile area of law. The decided cases show that the efforts were made to evolve test by reference to characteristics regarded as essential for constituting an activity as an "Industry". Various cases would show that the Apex Court has been guided more by empirical rather than a strictly analytical approach. Most of the decision have centered around the expression "undertaking" used in the definition. In *Bangalore Water Supply and Sewerage Board (1978 Lab. I.C. 778)* the Apex Court reviewed the earlier decisions on interpretation of the wide words encompassed in the definition and formulated positive and negative principles for identifying "industry" as enacted by clause (j) of section 2 of the Act. It would be

expedient to reproduce the authoritative pronouncement of the Court, in the very words set out in the majority decision, handed down by Justice Krishna Iyer, which are extracted thus:

I. "Industry" as defined in S.2(j) and explained in *Banerjee (AIR 1953 S.C.58)* has a wide import.

(a) Where (i) systematic activity, (ii) organized by Co-operation between employer and employee (the direct and substantial element is chimerical) (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss i.e. making, on a large scale *prasad* or foods) *prima facie*, there is an "industry" in that enterprise.

(b) Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.

(c) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

(d) If the organization is a trade or business it does not cease to be one because of philanthropy animating the undertaking.

II. Although section 2(j) uses words of the widest amplitude in its two limbs, the re-meaning cannot be magnified to overreach itself.

(a) "Undertaking" must suffer a contextual and associational shrinkage as explained in *Banerjee* and in this judgement, so also, service, calling and the like. This yields the inference that all organized activity possessing the triple elements in 1(supra), although not trade or business, may still be 'industry' provided the nature of activity, viz. the employer-employee basis, bears resemblance to what we find in trade or business. This takes into the fold 'industry' undertaking, calling and services, adventures, "analogous to the carrying on the trade or business". All features, other than the methodology of carrying on the activity viz in organizing the co-operation between employer and employee, may be dissimilar. It does not matter, if on the employment terms there is analogy.

III. Application of these guidelines should not short of their logical reach by invocation of creeds, cults or inner sense of incongruity or outer sense of motivation for or resultant of the economic



operations. The ideology of the Act being industrial peace, regulation and resolution of industrial disputes between employer and workmen, the range of their statutory ideology must inform the reach of the statutory definition. Nothing less, nothing more.

- (a) The consequences are (i) profession, (ii) clubs, (iii) education institutions, (iv) co-operatives, (v) research institutes, (vi) charitable projects and (vii) other kindred adventures, if they fulfil the triple tests listed in 1(supra), cannot be exempted from the scope of section 2(j).
- (b) A restricted category of professions, clubs, co-operatives and even gurukulas and little research labs may qualify for exemption if in simple ventures, substantially, and going by the dominant nature criterion, substantively no employees are entertained but in menial matters, marginal employees are hired without destroying the non employee character of the unit.
- (c) If, in a pious or altruistic mission many employ themselves, free or for small honoraria or like return, mainly drawn by sharing in the purpose or cause, such as lawyers volunteering to run a free legal services clinic or doctors serving in their spare hours in a free medical centre or ashramites working at the bidding of the holiness, divinity or like central personality, and the services are supplied free or at nominal cost and those who serve are not engaged for remuneration or on the basis of master and servant relationship, then, the institution is not an industry even if stray servants, manual or technical, are hired. Such eleemosynary or like undertakings alone are exempt not other generosity, compassion, developmental passion or project.

#### IV. The dominant nature test:

- (a) Where a complex of activities, some of which qualify for exemption, other not, involves employees on the total undertaking, some of whom are not “workmen” as in the University of Delhi case (AIR 1963 S.C.1873) or some departments are not productive of goods and services if isolated, even then, the predominant nature of the services and the integrated nature of the departments as explained in the Corporation of Nagpur (AIR 1960 S.C.657) will be the true test. The whole undertaking will be industry

although those who are not “workmen” by definition may not benefit by the status.

- (b) Notwithstanding the previous clauses, sovereign functions, strictly understood (alone) qualify for exemption, not the welfare activities or economic adventures undertaken by govt. or statutory bodies.

- (c) Even in department discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within S.2(j)

- (d) Constitutional and competently enacted legislative provisions may remove from the scope of the all categories which otherwise may be covered thereby.

V. We overrule *Safdarjung* (AIR 1970 S.C.1407), *Solicitors case* (AIR 1962 S.C. 1080), *Gymkhana* (AIR 1968 S.C. 554), *Delhi University* (AIR 1963 S.C.1873), *Dhanraj Giriji Hospital* (AIR 1975 SC 2032) and other rulings whose ratio runs counter to the principles enunciated above, and the *Hospital Mazdoor Sabha* (AIR 1960 SC 610) is hereby rehabilitated.”

17. Principles laid down in *Bangalore Water Supply & Sewerage Board* (supra) hold ground. Therefore, the controversy raised will be adjudicated in view of the law laid by the Apex Court in the precedent referred above. The Institute agitates that it is not an industry. The view point held by the Institute is that no profit motive activities are being carried on by it. No business is being run, hence the Institute cannot be termed as an “industry”. Except the facts referred above, the Institute nowhere projects any other factors to lay emphasis on the fact that it is not an ‘industry’.

18. In *Ahmedabad Textile Industry’s Research Association* [1960 (2) LLJ 720], the Association was established to carry on research with respect to the textile industry with a view to secure greater efficiency, rationalization and reduction of cost, which were “material services” to the textile industry hence the Association was held to fall within the ambit of definition of industry. But in *Safdarjung Hospital case* (supra) it was not held to be an industry because it was a non-profit making body and its work was in the nature of training, research and treatment. In *Indian Standard Institute* [1966 (1) LLJ 33] the Apex Court suggested that in order to be recognized as an undertaking analogous to trade or business, the activity must be an economical activity in the sense that it is productive of material goods or material services. In *Bangalore Water Supply and Sewerage Board* (supra), the Apex Court laid down that an activity systematically or habitually undertaken for production or distribution of

goods for rendering material services to the community at large or a part of such community with the help of employees is an undertaking. An 'industry' thus was said to involve cooperation between the employer and employees for the object of satisfying material human needs but not for oneself nor for pleasure nor necessity for profit. Lack of business and profit motive or capital investment would not take out an activity from the sweep of 'industry', if other conditions are satisfied. It is the activity in question which attracts the definition and absence of investment of any capital or the fact that the activity is conducted for profit motive or not, would not make material difference. Conversely mere existence of profit motive will not necessarily convert the activity into "industry" if other tests are not satisfied.

19. Shri Khan argued that the Institute carry out sovereign functions hence it cannot be termed as an industry. Therefore it is expedient to know as to what are regal and sovereign functions of the State which may qualify for exemption from the ambit of the definition of word "industry"? Regal powers of the State has acquired a definite connotation, which can be described as "administration of justice, maintenance of order, repression of crime, security of borders from external aggression and legislative powers, as among the primary and inalienable functions of a Constitutional Government". In *Corporation of City of Nagpur* [1960 (1) LLJ 523] the Apex Court observed that it could not have been in contemplation of the legislature to bring in the regal functions of the State within the definition of "industry" and to confer jurisdiction on Industrial Tribunal to decide disputes in respect thereof. The activities of the Government which can be properly described as regal or sovereign activities, are therefore, outside the scope of industry. In *Hospital Mazdoor Sabha* [1960 (1) LLJ 251] the Supreme Court adumbrated the test: can such activity be carried on by a private individual or group of individuals? The answer to this is : if a business or activity could not be carried on by a private individual or group of individuals, it could not be an industry, while if it could be, it might fall within the scope of "industry". This test was reiterated in *Corporation of City of Nagpur* (supra) but rejected in *Gymkhana Club* [1967 (II) LLJ 720]. In *Bangalore Water Supply and Sewerage Board* (supra) the Apex Court observed "\*\*\*\* sovereign functions, strictly understood, (alone) qualify for exemption, not the welfare activities or economic adventures undertaken by Government or statutory bodies. Even in departments discharging sovereign functions, if there are units, which are "industry" and they are substantially severable, they can be considered to come within section 2(j)". In *Chief Conservator of Forests* [1996 (1) LLJ 1223] the above proposition was reiterated where in it was observed "\*\*\*\* even within the wider circle of sovereign function, there may be an inner circle encompassing some units which

could be considered as "industry", if substantially severable".

20. In *Physical Research Laboratory* [1997 (2) LLJ 625] the Apex court held that the Physical Research Laboratory is not an 'industry' because it is not engaged in an activity which can neither be called business, trade or manufacturing nor it is an undertaking analogous to business or trade. It is not engaged in commercial or industrial activity and cannot be described as an economic venture or commercial enterprise as it is not its objective to produce and discharge services which would satisfy wants and needs of consumer community. It is not rendering any services to others. It is engaged in pure research in space science.

21. While reaching the conclusion, referred above, the Apex Court relied observations made in *Bangalore Water Supply* (supra) with respect to research institutes, which observations are extracted thus:

"Does research involve collaboration between employer and employee ? It does. The employer is the institution, the employees are the scientists, para-scientists and other personnel. Is scientific research service? Undoubtedly it is. Its discoveries are valuable contributions to the wealth of the nation. Such discoveries may be sold for a heavy price in the industrial or other markets. Technology has to be paid for and technological inventions and innovations may be patented and sold. In our scientific and technological age nothing has more cash value, as intangible goods and invaluable services, than discoveries. For instance, the discoveries of Thomas Alva Edison made him fabulously rich. It has been said that his brain had the highest cash value in history for he made the world vibrate with the miraculous discovery of recorded sound. Unlike most inventors, he did not have to wait to get his reward in heaven; he received it munificently on this gratified and grateful earth, thanks to conversion of his inventions into, money a plenty. Research benefits industry. Even though a research institute may be a separate entity disconnected from the many industries which funded the institute itself, it can be regarded as an Organisation, propelled by systematic activity, modelled on co-operation between employer and employee and calculated to throw up discoveries and inventions and useful solutions which benefit individual industries and the nation in terms of goods and services and wealth. It follows that research institutes, albeit run without profit-motive, are industries".

22. In the light of above legal propositions, facts of the present controversy are to be scanned. As claimed by

the Institute, it performs sovereign functions of implementation of provisions of Livestock Importation Act, 1988. Under that Act, the Institute had to carry out import risk analysis in respect of livestock products which are imported in the country. The Institute is also supposed to conduct quarantine inspection, sampling and testing as post import requirements. After inspection of livestock products, the Institute issues certificate in respect of livestock products imported in the country. It also accords quarantine clearance for entry of livestock products. Wherever disinfection or any other treatment is necessary in respect of livestock products, the Institute issues directions to the importers to arrange for disinfection or other treatment of the consignment. Shri Khan argued that all these functions are sovereign functions, hence the Institute cannot be termed as an industry. I am afraid that submissions made by Shri Khan have any force. Functions which are being carried out by the Industry are welfare activities. These functions, as projected by the Institute, do not fall within the ambit of administration of justice, maintenance of order, repression of crime, security of borders from external aggression and legislative powers of the State. Activities carried out by the Institute cannot be described as regal or sovereign activities, since such activities could be carried out by private individuals or group of individuals.

23. Even in departments discharging sovereign functions, there may be units, which are “industry” and they are substantially severable, they can be considered to come within section 2(j) of the Act. As projected by Shri Khan, Institute maintains sheds and food stocks at quarantine stations where imported animals are kept for quarantine period. The Institute engages casual labours to maintain those sheds and stocks, since animals discharge urine and dung during its stay at quarantine stations. Functions of cleaning and maintenance of quarantine stations cannot be termed as sovereign functions by any stretch of imagination. Therefore, such functions as carried out by casual labours, like the claimant, are industry within the wider circle of sovereign functions, if activities of the Institute are held to be regal. Thus, it is evident that there is hardly any activity performed by the Institute which a private entrepreneur cannot carry out. Resultantly, it emerges over the record that activities carried on by the Institute cannot be termed as regal.

24. The Institute carry out its functions with co-operation between it and its casual employees. Activities performed by the Institute are systematic one. It renders services to satisfy human wants. Lack of business or profit motive or capital investment would not take out attributes of the Institute from the sweep of industry, if other conditions are satisfied. These facts make me to comment that triple test, referred above stood satisfied and activities of the Institute fall within the ambit of industry, as defined

under section 2(j) of the Act. Objections raised by the Institute is brushed aside on that count. The issue is, therefore, answered in favour of the claimant.

### Issue No. I

25. An employer may discharge a portion of his labour force as surplusage in a running or continuing business for variety of reasons, e.g., for economy, convenience, rationalization in industry, installation of a new labour saving machinery etc. The Act defines “termination by the employer of the service of a workman for any reasons whatsoever”, except the categories exempted in sub-section 2(oo), to be retrenchment. The definition of the term “retrenchment”, as enacted by the Act, is extracted thus:

“(oo) “retrenchment” means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include :

- (a) voluntary retirement of the workman; or
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (bb) termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
- (c) termination of the services of a workman on the ground of continued ill-health”.

26. Definition of retrenchment is very wide and in two parts. The first part is exhaustive, which lays down that retrenchment means the termination of the service of a workman by the employer “for any reason whatsoever” otherwise than as a punishment inflicted by way of disciplinary action. Thus main part of the definition itself excludes the termination of service, as a measure of punishment inflicted by way of disciplinary action from the ambit of retrenchment. The second part further excludes (i) voluntary retirement of the workman, or (ii) retirement of workman on reaching the age of superannuation, or (iii) termination of the service of a workman as a result of non-renewal of contract of employment, or (iv) termination of contract of employment in terms of a stipulation contained in the contract of employment in that behalf, or (v) termination of service on the ground of continued ill health of the workman. Reference can be made to the precedents in *Avon Services (Production Agencies) (Pvt.) Ltd.* [1979 (I) LLJ 1] and *Mahabir* [1979 (II) LLJ 363].

27. Section 25F of the Act lays down conditions pre-requisite to retrenchment, which are as follows:

- (i) There should be one month's notice in writing to the workman concerned.
- (ii) The notice should specify the reasons for retrenchment.
- (iii) The period of one month's notice should have expired before retrenchment is enforced, or the workman has been paid in lieu of such notice the wages for the period.
- (iv) The workman has been paid retrenchment compensation which should be equivalent to 15 days' average pay for every one years' service or any part thereof provided it exceeds six months.
- (v) The notice is also given to the appropriate Government.

28. For seeking protection under section 25-F of the Act an employee should be in continuous service under an employer for not less than one year. Continuous service for a period of one year may include period of interruption on account of sickness or authorized leave or accident or strike, which is not illegal or lockout or cessation of work which is not due to any fault on the part of the workmen, as enacted by provisions of sub section (1) of section 25-B of the Act. Sub-section (2) of the said section introduces a fiction to the effect that even if a workman is not in "continuous service" within the meaning of clause (1) for a period of one year or six months, he shall be deemed to in continuous service for that period under an employer if he has actually worked for the days specified in clauses (a) and (b) thereof. In *Vijay Kumar Majoo* (1968 Lab.I.C.1180) it was held that one year's period contemplated by sub-section (2) furnished a unit of measure and if during that unit of measure the period of service actually rendered by the workman is 240 days, then he can be considered to have rendered one year's continuous service for the purpose of the section. The idea is that if within a unit period of one year a person had put in at least 240 days of service, then he must get the benefit conferred by the Act. Consequently, an enquiry has to be made to find out whether the workman actually worked for not less than 240 days during the period of 12 calendar months immediately preceding the retrenchment.

29. In *Ramakrishna Ramnath* [1970 (2) LLJ 306], Apex Court announced that when a workman renders continuous service of not less than 240 days in 12 calendar months, he is deemed to have completed one years' service in the industry. It would be expedient to reproduce observations made by the Apex Court in that regard, which are extracted thus:

"Under Section 25-B a workman who during the period of 12 calendar months has actually worked in an industry for not less than 240 days is to be deemed to have completed One year's service in the industry. Consequently an enquiry has to be made to find out whether the workman had actually worked for not less than 240 days during period of 12 calendar months immediately preceding the retrenchment. These provisions of law do not show that a workman after satisfying the test under Section 25-B has further to show that he has worked during all the period he has been in the service of the employer for 240 days in the year".

30. Interruption of service occurred during the course of job has to be included in uninterrupted services. Fiction under section 25-B of the Act will operate if workmen has actually worked for 240 days in a calendar year. The explanation appended to section 25-B of the Act specifically includes the days on which workman was laid off under an agreement or he has been on leave with full wages, or he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment and in the case of a female, maternity leave, under the expression 'actually worked' used under sub-section (2) of section 25-B of the Act. Question for consideration would be as to whether the words 'actually worked' would not include holidays, Sundays and Saturdays for which full wages are paid. The Apex Court was confronted with such a proposition in *American Express Banking Corporation* [1985 (2) LLJ 539], wherein it was ruled that the expression 'actually worked under the employer', cannot mean those days only when the workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. The Court ruled that Sundays and other holidays, would be comprehended in the words 'actually worked' and it countenanced the contention of the employer that only days which are mentioned in the explanation should be taken into account for the purpose of calculating the number of days on which the workman had actually worked though he had not so worked and no other days. The Court observed that the explanation is only clarificatory, as all explanations are, and cannot be used to limit the expanse of the main provision. Precedent in *Lalappa Lingappa* [1981 (1) LJ 308] was distinguished by the Apex Court in the case referred above. The precedent was followed in *Standard Motor Products of India Ltd.* [1986 (1) LLJ 34]. Thus, it is crystal clear from the law laid above that Sundays and holidays shall be included in computing continuous service under section 25-B of the Act.



31. In order to establish continuous period of 240 days in preceding 12 months from the date of his alleged termination by the Institute, the claimant had tendered his affidavit as Ex.WW1/A, as evidence. In affidavit Ex.WW1/A, he swears that he was engaged on muster roll by the Institute in February 1993. Copy of letter No.10232/1/96-Admn.-II dated 04.02.1993, proved as Ex.WW1/1, would project that he performed duties with the Institute with effect from February 1993, asserts the claimant. He performed continuous services with some artificial breaks for one or two days in each calendar year. He approached the CAT vide OA No.1980 of 1999 wherein directions were issued to the Institute to re-engage him with preference over freshers or new comers and to consider conferment of temporary status in case he had completed 240 days continuous service. The said order was not implemented by the Institute. He had completed more than 240 days in each calendar year, swears the claimant. His wages for the month of April 93 were paid to him by the Institute on the strength of Ex.WW1/4.

32. Dr. Vijay Kumar entered the witness box to rebut facts unfolded by the claimant. In his affidavit, Ex.MW1/A, Dr.Vijay Kumar projects that the claimant was initially engaged in April 1996. He was subsequently engaged as per requirement from time to time till February 2001. Thereafter, he was not engaged by the Institute. Temporary status was not granted to the claimant since he does not fulfil conditions prescribed in office memorandum dated 10.09.1993. He asserts that as per record, the Institute engaged daily wagers with effect from April 1996 and not prior to it.

33. Shri L.C. Mehra, unfolded that Ex.WW1/1 was interpolated which purports to have been issued from file No.12031/1/96/Admn.II dated 04.02.1993. He declares that this file was opened in 1996. It was not possible to issue that document in February in February 1993 when file in question was opened in 1996. He unfolds that Ex.WW1/W20 bears his signatures, which document relates to February 1997.

34. In order to assess facts unfolded by rival parties, depositions of the claimant, Dr. Vijay Kumar and Shri L.C. Mehra are meticulously assessed, in the light of documents proved over the record. Ex.WW1/2 is an order passed by CAT in OA No.1980 of 1999 wherein facts are detailed to the effect that the claimant pleaded that after having been engaged in April 1996, he continued to work with the Institute upto November 1996. Thereafter, he was re-engaged on 20.01.1997 and continued to work upto 30.09.1999 with occasional breaks. Order referred above, recites facts which demolishes case of the claimant to the effect that he joined services with the Institute in February 1993. Furthermore, Ex.WW1/1 purports to have been signed by Shri L.C. Mehra, who denounces that document

completely. Shri Mehra places Ex.MW1/W20 over the record to establish that Ex.WW1/1 relates to muster roll for the month of February 1997, which has been fabricated by the claimant as muster roll for the month of February 1993. Testimony of Shri Mehra remained un-assailed on that proposition. Therefore, it emerged that Ex.WW1/1 was fabricated by the claimant in order to establish that he was serving with the Institute since February 1993. In fact, muster roll for the month of February 97 was used by the claimant to project his claim to the effect that he served the management since February 1993.

35. With a view to substantiate his claim of serving the Institute since 1993, the claimant attempt to prove photocopy of letter No.12032/1/06-Adm.-II purporting to be muster roll of daily rated workers for the month of April 1993 as Ex.WW1/4. This document seems to have been issued by Shri H.K. Jagota, Under Secretary, Ministry of Agriculture, Government of India, New Delhi, wherein names of Raj Kumar and the claimant appear purporting to have worked for 6 days and 5 days respectively in April 1993. As per this document, they were paid @ Rs.71.35 per day as their wages. When this document is scrutinized, it emerged that as per contents of this document, file was opened in the Ministry in the year 2006, which proposition cannot be correct since wages for the month of April 1993 were to be released in favour of Shri Raj Kumar and the claimant. When attempts were made to reconcile facts detailed in Ex.WW1/1 and Ex.WW1/4 it came to light that wages @ Rs.77.40 per day were allegedly paid in February, 1993 while wages @ Rs.71.35 per day was paid in April 1993. This fact makes the claim of the claimant unworthy of credence. In February 1993 minimum wages cannot be higher than the minimum wages notified in April 1993. Resultantly Ex.WW1/4 is also found to be a fabricated document. Ex.MW1/W18 is also placed on record by the claimant. As per contents of this document, file was opened in 1996 for release of wages of muster roll employees in October 1993. Wages @ Rs.77.40 per day were paid to the causal employees in October 1993, while in April 1993 wages @ Rs.71.35 per day was paid. Minimum rates of wages are notified, effective from 1st April, by the appropriate Government. Hence wages paid in February 1993 cannot be higher than the wages paid in April 1993 and wages paid in October 1993 cannot be at the same rate as paid in February, 1993. These facts make it apparent that Ex.MW1/W18 is also a forged document. Annexure D, filed by the claimant, alongwith his application dated 18.10.2011, is an exact copy of Ex.WW1/4, except that it purports to be muster roll of daily rated workers for the month of April 1996. Annexure E is the facsimile of Ex.WW1/4. Except the interpolation of the month to which Annexure E or Ex.WW1/4 relate, these two documents purport to be copy of Annexure D. As pointed out above, file in respect of these documents purport to have been

opened in the year 2006. File for muster roll for the month of April 1993 as well as April 1996 cannot be opened in the year 2006, as explained by Shri Mehra. Thus, it is obvious that Ex.WW1/4, Annexure D and Annexure E were fabricated by the claimant only with an idea to project that he was working with the Institute in April 1993. When closely perused, it came to light that this file was opened in 1995 and it relates to muster roll of daily rated workers for the month of April 1996. Resultantly, Ex.WW1/4 cannot espouse the cause of the claimant, being a fabricated document.

36. As per the case projected by the claimant before the CAT, it emerge out of order Ex.MW1/2, that he was engaged by the Institute for the first time in 1996, which proposition is not disputed by the Institute. Period for which the claimant worked with the Institute was detailed by the latter in its written statement filed before the Conciliation Officer. The Institute details period of engagement of the claimant in the said document as follows:

January 1997 – 4 days, February 1997 – 20 days, March 1997 – 21 days, April 1997 – 15 days, May 1997 – 5 days, June 1998 – 26 days, July 1997 – 25 days, August 1997 – 19 days, September 1997 – 24 days, October 1997 – 23 days, November 1997 – 11 days, December 1997 – 25 days, January 1998 – 27 days, February 1998 – 24 days, March 1998 – 25 days, May 1998 – 17 days, June 1998 – 25 days, July 1998 – 26 days, August 1998 – 26 days, September 1998 – 25 days, October 1998 – 26 days, January 1999 – 25 days, February 1999 – 23 days, March 1999 – 23 days, May 1999 – 15 days, June 1999 – 16 days, May 2000 – 6 days, June 2000 – 25 days, July 2000 – 25 days, August 2000 – 21 days, September 2000 – 23 days, November 2000 – 16 days, December 2000 – 22 days, January 2001 – 23 days, February 2001 – 26 days.

37. The claimant was re-engaged on 20.01.1997 and worked with the Institute at different spells till 30.06.1999. His services were dis-engaged, which action was challenged by him before the CAT. The CAT directed the Institute to give him priority of re-engagement over freshers and new comers. Pursuant to the said directions, claimant was re-engaged by the Institute in May 2000. He worked for the following period till his services were again dispensed vide order dated 09.03.2001:

May 2000-6 days, June 2000-25 days, July 2000-25 days, August 2000-21 days, September 2000 - 23 days, November 2000-16 days, December 2000-22 days, January 2001-23 days, February 2001-27 days and March 2001-9 days.

38. Contra to it, claimant attempts to say that he continuously served the Institute till 06.06.2008, the date when his serves were terminated. Except the bald statement

made in his affidavit, no documents in the form of record of attendance, payment of wages or other service record was placed before the Tribunal by the claimant to project that he continuously served the Institute till 06.06.2008. It is for the claimant to lead evidence to show that he had in fact worked for 240 days in a year preceding his termination and mere filing of affidavit cannot be regarded as sufficient evidence in that regard.

39. Burden to prove that he had worked for 240 days in a year lies on the claimant, when such a claim is denied by his employer. Mere ocular facts in that regard would not be enough to prove the factum of continuously serving the employer for 240 days. To discharge that onus, claimant had to adduce cogent evidence, both ocular and documentary. He is to bring over the record nominal muster rolls for the given period, letter of engagement or termination, wage register, attendance register. In case he fails to produce such documentary evidence to substantiate his claim, his ocular testimony would be of no avail. Law to this effect was laid by the Apex Court in Rajasthan State Ganganagar Mills [2004 (103) FLR 192], R.M. Yelati [2006(1) SCC 206] and Shymal Chandra Bhowmik [2006 (1) SCC 337].

40. Claimant makes a bald statement to this effect that he continuously served the Institute till 06.06.2008. On the other hand, his termination letter dated 09.03.2001 has been placed over the record. Dr. Vijay Kumar also deposes that the claimant was not engaged thereafter. Consequently, it is concluded that services of the claimant were dispensed with on 09.03.2001 and he was not engaged thereafter.

41. As pointed out above, continuous service of 240 days is to be reckoned in preceding 12 months from the date when services of an employee is dispensed with by his employer. Therefore, this Tribunal has to reckon period of 240 days from 09.03.2001 in order to ascertain continuity of service for a period of one year, as contemplated by section 25B of the Act. When this exercise is undertaken, it emerges that claimant rendered continuous service of 182 days from March 2001 to April 2000, 31 days from March 2000 to April 1999, 216 days from March 1999 to April 1988, 249 days from March 1988 to April 1997 and 45 days service from March 1997 to June 1997. When he was re-engaged in May 2000, he served the Institute till 09.03.2001. After his re-engagement the claimant rendered continuous service of 196 days.

42. Period of service rendered by the claimant, as detailed above, nowhere includes Sundays and holidays. In a year, an employee may get 52 weekly offs, besides three national holidays. In case 52 weekly offs and three national holidays are added to the periods referred above, it would come over the record that the claimant rendered continuous service of 240 days in calendar year from March

1999 to April 1998 and from March 1998 to April 1997, within the meaning of section 25B of the Act. Issue, is therefore, answered in favour of the claimant and against the Institute.

### Issue No. III

43. Next count of attack was made by the Institute claiming that orders passed by the CAT operates as res judicata. According to Shri Khan, claimant is estopped from raising any grievance in respect of the propositions which were adjudicated by the CAT in its order dated 08.12.1999. Contra to it, Shri Prasad submits that CAT does not exercise concurrent jurisdiction with this Tribunal in respect of matters covered under the Act. He agitates that since CAT does not exercise concurrent jurisdiction with this Tribunal, orders passed by CAT do not operate as res judicata. For an answer to this proposition, it would be considered as to whether order dated 08.12.1999, proved as Ex.MW1/2, operates as res judicata. For an answer to this proposition, law relating to doctrine of res-judicata would be noted. Law laid under section 11 of the Code of Civil Procedure 1908 (in short the Code) embodies the doctrine of res-judicata or the rule of conclusiveness of a judgment, as to the point decided either of fact, or of law, or of fact and law, in every subsequent suit between the same parties. It enacts that once a matter is finally decided by a competent court, no party can be permitted to reopen it in a subsequent litigation. The doctrine of res-judicata has been explained in the simplest possible manner by Das Gupta J. in the case of Satyadhyan Ghosal (AIR 1960 S.C. 941) in following words:

“The principle of res-judicata is based on the need of giving a finality to judicial decision. What it says is that once a res is judicata, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter – whether on a question of fact or a question of law – has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceedings between the same parties to canvass the matter again”.

44. It is not every matter decided in a former suit that will operate as res judicata in a subsequent suit. To constitute a matter as res-judicata under section 11 of the Code, the following conditions must be satisfied:

1. The matter directly and substantially in issue in the subsequent suit must be the same matter which was directly and substantially in issue either actually or constructively in the former.
  2. The former suit must have been a suit between the same parties or between parties under whom they or any of them claim.
  3. Such parties must have been litigating under the same title in the former suit.
  4. The court which decided the former suit must be a court competent to try the subsequent suit or the suit in which such issue is subsequently raised.
  5. The matter directly and substantially in issue in the subsequent suit must have been heard and finally decided by the court in the former suit.
45. In *Nawab Hussain*, (1977 Lab. I.C.911), the Apex Court enunciated general principles of doctrine of res-judicata as under:
- “The principle of estoppel per res judicata is a rule of evidence. As has been stated in *Marginson v. Blackburn Borough Council* [1939 (2) KB 426 at P.437] it may be said to be “the broader rule of evidence which prohibits the reassertion of a cause of action.” This doctrine is based on two theories: (i) the finality and conclusiveness of judicial decisions for the final termination of disputes in the general interest of the community as a matter of public policy, and (ii) the interest of the individual that he should be protected from multiplication of litigation. It, therefore, serves not only a public but also a private purpose by obstructing the reopening of matters which have once been adjudicated upon. It is thus not permissible to obtain a second judgment for the same civil relief on the same cause of action, for otherwise the spirit of contentiousness may give rise to conflicting judgments of equal authority, lead to multiplicity of actions and bring the administration of justice into disrepute. It is the cause of action which gives rise to an action, and that is why it is necessary for the courts to recognize that a cause of action which results in a judgment must lose its identity and vitality and merge in the judgment when pronounced. It cannot therefore survive the judgment, or give rise to another cause of action on the same facts. This is what is known as the general principle of res-judicata.”
46. Whether CAT is competent to try the present industrial dispute, in order to form an opinion that the order under reference operates as res judicata. It emerged out of order Ex.MW1/1 that the claimant moved a petition before the CAT pleading therein that he was working with the Institute as a casual employee since April 1996. His services were discontinued at the end of November 1996. However, he was re-engaged on 20.01.1997 and served he

Institute continuously till 13.06.1999 with occasional breaks. His services were dispensed with by oral order of 13.06.1999. He claimed reinstatement in service, besides conferment of temporary status in terms of instructions contained in office memorandum dated 10.09.1993. On hearing the parties, the CAT concluded that the claimant shall have priority of re-engagement over freshers and new comers and in case he has completed more than 240 days, he was also to be considered for conferment of temporary status. As projected above, this Tribunal has to adjudicate as to whether the claimant is entitled for conferment of temporary status with effect from 01.02.1993. Thus, obviously in OA No.1980 of 1999, claimant raised the issue before the CAT that he was entitled to conferment of temporary status, which proposition was answered in order Ex.MW1/2. Therefore, it is evident that the matter which is directly and substantially in issue in the present adjudication was directly and substantially the issue in original application filed before the CAT and parties were the same. Only proposition which is to be adjudicated is as to whether CAT is competent to adjudicate the industrial dispute referred for adjudication to this Tribunal. Section 14 of the Administrative Tribunal Act, 1985 contemplates that the CAT shall exercise jurisdiction, powers and authority in relation to recruitment and matters concerning any civil services or civil post in the union. For sake of convenience, provisions of sub-section (i) of section 14 of the Administrative Tribunal Act, 1985 are extracted thus:

“14(1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts except the Supreme Court in relation to—

- (a) recruitment, and matters concerning recruitment, to any All- India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian;
- (b) all service matters concerning—
  - (i) a member of any All- India Service; or
  - (ii) a person [not being a member of an All- India Service or a person referred to in clause (c)] appointed to any civil service of the Union or any civil post under the Union; or
  - (iii) a civilian not being a member of an All- India Service or a person referred to in clause (c)] appointed to any defence, services or a post connected with defence, and pertaining to the service of such member, person or civilian, in

connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation [or society] owned or controlled by the Government;

- (c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub-clause (ii) or sub-clause (iii) of clause (b), being a person whose services have been placed by a State Government or any local or other authority or any corporation [or society] or other body, at the disposal of the Central Government for such appointment”.

47. Section 28 of the Administrative Tribunals Act, 1985 projects that Industrial Tribunal, Labour Court or other authority constituted under the Act shall exercise jurisdiction in respect of service conditions and matters contained in the Act. For sake of convenience, provisions of the said section are reproduced thus:

“28. ‘On and from the date from which any jurisdiction, powers and authority becomes exercisable under this Act by a Tribunal in relation to recruitment and matters concerning recruitment to any service or post or service matters concerning members of any service or persons appointed to any service or post, no court except-

- (a) the Supreme Court; or
- (b) any Industrial Tribunal, Labour Court or other authority constituted under the Industrial Disputes Act, 1947 or any other corresponding law for the time being in force, shall have or be entitled to exercise any jurisdiction, powers or authority in relation to such recruitment or matters concerning such recruitment or such service matters.”

48. The above provisions make it apparent that though CAT shall exercise all jurisdiction, powers and authority in relation to recruitment to any civil service or post under the Union or to a post connected with defence or in the defence services, in either case, a post filled by a civilian, yet an Industrial Tribunal constituted under the Act shall have jurisdiction in relation to recruitment and matters concerning recruitment, in service or post or services matters concerning any person who falls within the ambit of the Act. Therefore, it emerges that the CAT exercises concurrent jurisdiction with Industrial Tribunal or Labour Court, constituted under the Act in relation to recruitment and matters concerning recruitment to any service or post or service matters concerning any person,



who falls within the ambit of workmen as defined under the Act.

49. Whether civil court has jurisdiction in relation to industrial dispute, the Apex Court dealt with the matter in *Premier Automobiles* (1976(1) SCC 496). On consideration of catena of decisions on the subject, The Apex Court enunciated following principles :

“(1) If the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Act the remedy lies only in the civil court.

(2) If the dispute is an industrial dispute arising out of a right or liability under the general or common law and not under the Act, the jurisdiction of the Civil Court is alternative, leaving it to the election of the suitor concerned to choose his remedy for the relief which is competent to be granted in particular remedy.

(3) If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suitor is to get an adjudication under the Act.

(4) If the right which is sought to be enforced is a right created under the Act such as Chapter VA then the remedy for its enforcement is either section 33C or the raising of an industrial dispute, as the case may be.

We may, however, in relation to principle 2 stated above hasten to add that there will hardly be a dispute which will be an industrial dispute within the meaning of section 2(k) of the Act and yet will be one arising out of a right or liability under the general or common law only and not under the Act. Such a contingency, for example, may arise in regard to the dismissal of an unsponsored workman which in view of the provision of law contained in Section 2A of the Act will be an industrial dispute even though it may otherwise be an individual dispute. Civil Courts, therefore, will have hardly an occasion to deal with the type of cases falling under principle 2. Cases of industrial disputes by and large, almost invariably, are bound to be covered by principle 3 stated above.”

50. While analysing principles adumbrated in *Premier Automobiles* (supra), the Apex Court in *Rajasthan State Road Transport Corporation* (1995(5) SCC 75) summarised those principle as follows:

“(1) Where the dispute arises from general law of contract, i.e., where reliefs are claimed on the basis of the general law of contract, a suit filed in civil court cannot be said to be not maintainable, even

though such a dispute may also constitute an “industrial dispute” within the meaning of Section 2(k) or Section 2-A of the Industrial Disputes Act, 1947.

(2) Where, however, the dispute involves recognition, observance or enforcement of any of the rights or obligations created by the Industrial Disputes Act, the only remedy is to approach the forums created by the said Act.

(3) Similarly, where the dispute involves the recognition, observance or enforcement of right and obligations created by enactment like Industrial Employment (Standing Orders) Act, 1946 - which can be called “sister enactments” to Industrial Disputes Act-and which do not provide a forum for resolution of such disputes, the only remedy shall be to approach the forums created by the Industrial Disputes Act provided they constitute industrial disputes within the meaning of Section 2(k) and Section 2-A of Industrial Disputes Act or where such enactment says that such dispute shall be either treated as an industrial dispute or says that it shall be adjudicated by any of the forums created by the Industrial Disputes Act. Otherwise, recourse to civil court is open.

(4) It is not correct to say that the remedies provided by the Industrial Disputes Act are not equally effective for the reason that access to the forum depends upon a reference being made by the appropriate Government. The power to make a reference conferred upon the Government is to be exercised to effectuate the object of the enactment and hence not unguided. The rule is to make a reference unless, of course, the dispute raised is a totally frivolous one *ex facie*. The power conferred is the power to refer to refer and not the power to decide, though it may be that the Government is entitled to examine whether the dispute is *ex facie* frivolous, not meriting an adjudication.

(5) Consistent with the policy of law aforesaid, we recommend to Parliament and the State Legislatures to make a provision enabling a workman to approach the Labour Court/Industrial Tribunal directly- i.e., without the requirement of a reference by the Government in case of industrial disputes covered by Section 2-A of Industrial Disputes Act. This would go a long way in removing the misgivings with respect to the effectiveness of the remedies provided by the Industrial Disputes Act.

(6) The certified Standing Orders framed under and in accordance with the Industrial Employment

(Standing Orders) Act, 1946 are statutorily imposed conditions of service and are binding both upon the employers and employees, though they do not amount to “statutory provisions”. Any violation of these Standing Orders entitles an employee to appropriate relief either before the forums created by the Industrial Disputes Act or the civil court where recourse to civil court is open according to the principles indicated herein.

(7) The policy of law emerging from Industrial Disputes Act and its sister enactments is to provide an alternative dispute-resolution mechanism to the workmen, a mechanism which is speedy, inexpensive, informal and unencumbered by the plethora of procedural laws and appeals upon appeals and revisions applicable to civil courts. Indeed, the powers of the courts and tribunals under the Industrial Disputes Act are far more expensive in the sense that they can grant such relief as they think appropriate in the circumstances for putting an end to an industrial dispute.

51. As detailed above, the Apex Court ruled that when a dispute involves recognition, observance or enforcement of any of the rights or obligations created by the Act, the only remedy is to approach the forums created by the Act only. For adjudication of an industrial dispute, which falls within the ambit of the Act, the CAT does not have any jurisdiction. It is obvious that provisions of section 28 of the Administrative Tribunals Act, 1985 are in contradiction to the law laid down by the Apex Court, when it relates to exercise of jurisdiction, powers or authority in relation to recruitment or matters concerning such recruitment or conditions of service of any person, who happens to be a workman within the meaning of section 2(s) of the Act. This proposition was considered by the CAT in its decision in *A. Padmavalley etc.* 1991(1) SLR 245) wherein proposition of law laid in *Premier Automobile* (supra), provisions of the Act as well as provisions of Administrative Tribunals Act, 1985 were construed and it was ruled that the CAT is not a substitute for the authorities constituted under the Act and does not exercise concurrent jurisdiction in regard to matters covered by the Act. The CAT concluded the proposition as follows:

- (i) Administrative Tribunal constituted in the Administrative Tribunals Act are not substitutes for the authorities constituted under the Industrial Tribunals Act and hence the Administrative Tribunal does not exercise concurrent jurisdiction with those authorities

in regard to matters covered by that Act. Hence, all matters over which the Labour Court of the Industrial Tribunal or other authorities had jurisdiction under the Industrial Disputes Act, do not automatically become vested in the Administrative Tribunal for adjudication. The decision in the case of *Sisodia*, which lays down a contrary interpretation is, in our opinion, not correct.

- (ii) An applicant seeking relief under the provisions of the Industrial Disputes Act must ordinarily exhaust the remedies available under that Act.
- (iii) The powers of the Admin. Tribunal are the same as that of the High court under Article 226 of the Constitution and the exercise of that discretionary power would depend upon the facts and circumstances of each case as well as on the principles laid down in the case of *Rohtas Industries* (supra).
- (iv) The interpretation given to the term ‘arrangement in force’ by the Jabalpur Bench in *Rammoo’s* case is not correct.

52. In view of the legal principles laid above, it is evident that CAT does not exercise concurrent jurisdiction with this Tribunal in regard to rights and obligations arising out of the Act. Resultantly, it is crystal clear that the CAT is not competent to adjudicate the industrial dispute, and as such, order passed by it in OA No.1980 of 1999 on 08.12.1999 would not operate as *res judicata*. Submissions made by Shri Khan, to the effect that the claimant cannot re-agitate the very issue relating to conferment of temporary status, which was adjudicated by the CAT vide order Ex.MW1/2, are untenable. His submissions in that regard are brushed aside.

53. Claimant seeks conferment of temporary status, since he claims to have rendered continuous service of 240 days in the aforesaid period. For adjudication of his claim for grant of temporary status, it is expedient to note the scheme formulated by Government of India in that regard. Scheme was formulated vide office memorandum No.51016/2/90-Estt (C) dated 10.09.1993, which runs as under:

“1. This scheme shall be called “Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Government of India, 1993.”

2. This Scheme will come into force with effect from 1.9.1993.

3. This scheme is applicable to casual labourers in employment of the Ministries/Departments of Government of India and their attached and subordinate offices, on the date of issue of these orders. But it shall not be applicable to casual workers in Railways, Department of Telecommunication and Department of Posts who already have their own schemes.

#### 4. Temporary Status

(i) Temporary status would be conferred on all casual labourers who are in employment on the date of issue of this OM and who have rendered a continuous service of at least one year, which means that they must have been engaged for a period of at least 240 days (206 days in the case of offices observing 5 days week).

(ii) Such conferment of temporary status would be without reference to the creation/availability of regular Group 'D' posts.

(iii) Conferment of temporary status on a casual labourer would not involve any change in his duties and responsibilities. The engagement will be on daily rates of pay on need basis. He may be deployed anywhere within the recruitment unit/territorial circle on the basis of availability of work.

(iv) Such casual labourers who acquire temporary status will not, however, be brought on to the permanent establishment unless they are selected through regular selection process for Group 'D' posts.

5. Temporary status would entitle the casual labourers to the following benefits:-

(i) Wages at daily rates with reference to the minimum of the pay scale for a corresponding regular Group 'D' official including DA, HRA and CCA

(ii) Benefits of increments at the same rate as applicable to a Group 'D' employee would be taken into account for calculating pro-rata wages for every one year of service subject to performance of duty for at least 240 days, 206 days in administrative offices observing 5 days week) in the year from the date of conferment of temporary status.

(iii) Leave entitlement will be on a pro-rata basis at the rate of one day for every 10 days of work, casual or any other kind of leave, except maternity leave, will not be admissible. They

will also be allowed to carry forward the leave at their credit on their regularization. They will not be entitled to the benefits of encashment of leave on termination of service for any reason or on their quitting service.

(iv) Maternity leave to lady casual labourers as admissible to regular Group 'D' employees will be allowed.

(v) 50% of the service rendered under temporary status would be counted for the purpose of retirement benefits after their regularization.

(vi) After rendering three years' continuous service after conferment of temporary status, the casual labourers would be treated on par with temporary Group 'D' employees for the purpose of contribution to the General Provident Fund, and would also further be eligible for the grant of Festival Advance/Flood Advance on the same conditions as are applicable to temporary Group 'D' employees, provided they furnish two sureties from permanent Government servants of their Department.

(vii) Until they are regularized, they would be entitled to Productivity Linked Bonus/ Ad- hoc bonus only at the rates as applicable to casual labourers.

6. No benefits other than those specified above will be admissible to casual labourers with temporary status. However, if any additional benefits are admissible to casual workers working in Industrial establishments in view of provisions of Industrial Disputes Act, they shall continue to be admissible to such casual labourers.

7. Despite conferment of temporary status, the services of a casual labourer may be dispensed with by giving a notice of one month in writing. A casual labourer with temporary status can also quit service by giving a written notice of one month. The wages for the notice period will be payable only for the days on which such casual worker is engaged on work."

54. As projected above, an employee has to render continuous service of 240 days in a calendar year for conferment of temporary status. Calendar year for the purpose of section 25B of the Act is to be reckoned going backwards from the date when the services of the workman has been dispensed with by his employer. From the date of termination of his services, it is to be noted whether he had rendered continuous service of 240 days in preceding

12 months. Therefore calendar year for section 25B of the Act is different than the calendar year which is to be taken into account while reckoning 240 days continuous service for grant of temporary status to the claimant. For that purpose, when an exercise is undertaken it emerged over the record that the claimant rendered 244 days continuous service from April to November 1996, 218 days continuous service from January 1997 to December 1997, 221 days from January 1998 to December 1998, 102 days continuous service from January 1999 to December 1999, 138 days from January 2000 to December 2000 and 58 days from January 2001 to 9<sup>th</sup> March 2001. As noted above, he rendered continuous service of 240 days in the year 1996. Whether continuous service of 244 days rendered by the claimant in the year 1996 would entitle him for conferment of temporary status. Answer has been provided by Office Memorandum No.40011/6/2002-Estt(C) dated 06.06.2002, which runs as under:

“**Subject:** Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Govt. of India, 1993-Clarifications.

The Undersigned is directed to say that the Casual Labourers (Grant of Temporary Status & Regularization) Scheme of Government of India, 1993 formulated in pursuance of the CAT, Principal Bench judgement dated 16<sup>th</sup> February, 1990 in the case of Raj Kamal & Others Vs. Union of India and circulated vide this Department's OM no.51016/2/90-Estt(C) dated 10<sup>th</sup> September, 1993, inter alia stipulate the following conditions for grant of temporary status to the persons recruited on daily wage basis in the Central Government Offices:-

(i) Temporary status would be conferred on all casual labourers who are in employment on the date of issue of the OM (namely 10-9-93);

(ii) Should have rendered a continuous service of at least one year, which means that they must have been engaged for a period of at least 240 days (206 days in the case of offices observing five days a week); and

(iii) Conferment of temporary status on casual labourer would not involve any change in his duties and responsibilities and the engagement will be on daily rates of pay on need basis. He may be deployed anywhere within the recruitment unit/territorial circle on the basis of availability of work.

2. Various Benches of the CAT and some High Courts have been taking the view that the scheme is an ongoing affair and that any casual employee who is

engaged for 240 days or more (206 days in case of five days a week offices) acquired a right to temporary status. The Supreme Court has finally decided the matter in SLP ( Civil ) No. 2224/2000) in the case of Union of India & Anr. Vs. Mohan Pal etc. etc. The Supreme Court has directed that:-

“The Scheme of 1-9-93 is not an ongoing Scheme and the temporary status can be conferred on the casual labourers under that Scheme only on fulfilling the conditions incorporated in clause 4 of the scheme, namely, they should have been casual labourers in employment on the date of the commencement of the scheme and they should have rendered continuous service of at least one year i.e. at least 240 days in a year or 206 days (in case of offices having 5 days a week). We also make it clear that those who have already been given ‘temporary’ status on the assumption that it is an ongoing Scheme shall not be stripped of the ‘temporary’ status pursuant to our decision”.

3. The Supreme Court in the above case have also considered the question as to whether the services of casual labourers who had been given ‘temporary’ status could be dispensed with as per clause 7 as if they were regular casual labourers and observed that-

“The casual labourers who acquire ‘temporary’ status cannot be removed merely on the whims and fancies of the employer. If there is sufficient work and other casual labourers are still to be employed by the employer for carrying out the work, the casual labourers who have acquired ‘temporary’ status shall not be removed from service as per clause 7 of the Scheme. If there is serious misconduct or violation of service rules, it would be open to the employer to dispense with the services of a casual labourer who had acquired the ‘temporary’ status”

55. As detailed above, for conferment of temporary status, casual labour should be in the employment on the date of commencement of the scheme and should have rendered continuous service of at least one year, i.e. 240 days or 206 days in case of offices observing 5 day week, in a year. Therefore, it becomes expedient for conferment of temporary status that the claimant should have been in the employment as on 10.09.1993. Since the scheme is not an ongoing scheme, it does not pertain to a casual employee who has been engaged for the first time in April 1996. Resultantly, it is clear that factum of rendering continuous service of 244 days in 1996 would not entitle the claimant for conferment of temporary status under the scheme



referred above. Law to this effect has been laid by the Apex Court in *Wazir Singh* [JT 2002(3) SC 49] wherein it was concluded that casual employee should be in continuous service of 240 days from the date of issuance of the circular till he becomes eligible for conferment of temporary status.

56. When claimant had rendered continuous service of 240 days with the Institute, in such a situation the Institute was under an obligation to give one month's notice or pay in lieu thereof and retrenchment compensation to the claimant. It is not the case of the Institute that on 09.03.2001, claimant reached the age of superannuation or sought voluntary retirement. No evidence was brought to show that he was employed for a fixed term of contract or his services came to an end on non-renewal of the contract agreement. It was also not asserted that his services were terminated on grounds of continued ill health. Neither services of the claimant were done away as punishment for a domestic action nor action of the management falls within the category exempted under second limb of section 2(oo) of the Act. Thus it is obvious that termination of services of the claimant, for any other reason, amounts to retrenchment, as defined by clause (oo) of section 2 of the Act.

57. The Institute was under an obligation to pay him compensation for retrenchment, when his services were dispensed with. Payment of retrenchment compensation is a condition precedent to a valid order of retrenchment. Precedents in *Bombay Union of Journalists* [1964 (1) LLJ 351], *Adaishwar Lal* (1970 Lab.I.C.936) and *B.M. Gupta* [1979 (1) LLJ 168] announce that subsequent payment of compensation cannot validate an invalid order of retrenchment.

58. Since one month notice or pay in lieu thereof specifying reasons for retrenchment and retrenchment compensation was not given to the claimant, his retrenchment is violation of provisions of section 25F of the Act. When order of termination of service is illegal or wrongful, the industrial adjudicator has to make a specific order of reinstatement of a workman. The problem confronting the industrial adjudicator is to promote its two objectives, security of an employee and protection against wrongful discharge or dismissal on the one hand and industrial peace and harmony on the other, fully leading ultimately to the goal of maximum possible production. In dealing with these problems, an industrial adjudicator is to balance relevant factors without adopting legalistic and doctrinaire approach. The Tribunal has to examine through circumstances of each case to see

whether reinstatement of dismissed employee is not inexpedient or improper. It has to take a decision in a spirit of fairness and justice following rules of justice and reason and after careful examination of the facts and circumstances of the case. Past record of the employee, nature of his alleged present lapse and the grounds on which order of the management is set aside are also relevant factors for consideration. Normally, where a workman cannot be said to be a type of person whose presence as an employee is undesirable and not conducive to maintenance of industrial peace, it will not be fit case for depriving him relief of reinstatement and grant him compensation in lieu thereof. Law to this effect was laid by the Apex Court in *Ruby General Insurance Company Ltd.* [1970(1) LLJ 63] and *Management of Monghyr Factory of ITC Ltd., Monghyr* (1978 Lab.I.C. 1256). Reference can also be made to *Western India Plywood Ltd.* [1982(1) LLJ 113] and *Delhi Cloth and General Mills Co. Ltd.* [1989 Lab.I.C. 490].

59. As projected above, termination of service of the claimant is violative of provisions of section 25F of the Act. However, it emerged over the record that the claimant fabricated documents in order to project a claim for conferment of temporary status and reinstatement in service. Since this Tribunal is not a civil court within the meaning of section 340 of the Code of Criminal Procedure, 1973, no enquiry was instituted in the matter to lodge a complaint against the claimant. However, it emerged over the record that the claimant is a type of person whose presence as an employee is undesirable and not conducive to maintaining industrial peace. Therefore, I am of the considered opinion that relief of reinstatement in service is found not to be justified. Section 11 A of the Act vests the industrial adjudicator with discretionary powers to give 'such other relief to the workman' in lieu of dismissal as circumstances of the case may require, where for some valid reasons, it considers that reinstatement with or without conditions will not be fair or proper.

60. When relief of reinstatement is not granted, in the alternative, the Tribunal may award compensation to the claimant in lieu of his reinstatement. No definite yardstick for measuring the quantum of compensation is available. In *S.S.Shetty* [1957 (11) LLJ 696] the Apex Court indicated some relevant factors which an adjudicator has to take into account in computing compensation in lieu of reinstatement, in the following words:

"The industrial Tribunal would have to take into account the terms and conditions of employment, the tenure of service, the possibility of termination of the employment at the instance of either party, the possibility of retrenchment by the employer or

resignation or retirement by the workman and even of the employer himself ceasing to exist or of the workman being awarded various benefits including reinstatement under the terms of future awards by industrial Tribunal in the event of industrial disputes arising between the parties in future..... In computing the money value of the benefits of reinstatement, the industrial adjudicator would also have to take into account the present value of what his salary, benefits etc. would be till he attained the age of superannuation and the value of such benefits would have to be computed as from the date when such reinstatement was ordered under the terms of the award.

Having regard to the considerations detailed above, it is impossible to compute the money value of this benefit of reinstatement awarded to the appellant with mathematical exactitude and the best that any tribunal or court would do under the circumstances would be to make as correct as estimate as is possible bearing, of course in mind all the relevant factors pro and con”.

61. A Divisional Bench of the Patna High Court in *B.Choudhary Vs. Presiding Officer, Labour Court, Jamshedpur* (1983) Lab.I.1755 (1758) deduced certain guidelines which have to be borne in mind in determining the quantum of compensation viz. (i) the back wages receivable (ii) compensation for deprivation of the job with future prospect and obtainability of alternative employment; (iii) employee's age (iv) Length of service in the establishment (v) capacity of the employer to pay and the nature of the employer's business (vi) gainful employment in mitigation of damages; and (viii) circumstances leading to the disengagement and the past conduct. These factors are only illustrative and not exhaustive. In addition to the amount of compensation, it is also within the jurisdiction of the Tribunal to award interest on the amount determined as compensation. Furthermore, the rate of such interest is also in the discretion of the Tribunal. Reference can be made to *Tabesh Process, Shivakashi* (1989 Lab.I.C.1887).

62. In *Assam Oil Co. Ltd.* [1960 (1) LLJ 587] the Apex Court took into account countervailing facts that the employer had paid certain sums to the workmen and her own earning in the alternative employment and ordered that “it would be fair and just to direct the appellant a substantial sum as compensation to her”. In *Utkal Machinery Ltd.* [1966 (1) LLJ 398] the amount of compensation equivalent to two year salary of the employee awarded by the industrial Tribunal was reduced

by the Supreme Court to an amount equivalent to one year salary of the employee in view of the fact that she had been in service with the employer only for 5 months and also took into consideration the unusual manner of her appointment at the instance of the Chief Minister of the State. In *A.K.Roy* [1970 (1) LLJ 228] compensation equivalent to two years salary last drawn by the workmen was held to be fair and proper to meet the ends of justice. In *Anil Kumar Chakaraborty* [1962 (II) LLJ 483] the Court converted the award of reinstatement into compensation of a sum of Rs.50000/- as just and fair compensation in full satisfaction of all his claims for wrongful dismissal from service. In *O.P.Bhandari* [1986 (II) LLJ 509], the Apex Court observed that it was a fit case for grant of compensation in view of reinstatement. The Court awarded compensation equivalent to 3.33 years salary as reasonable. In *M.K. Aggarwal* (1988 Lab.I.C.380), the Apex Court though confirmed the order of reinstatement yet restricted the back salary to 50% of what would otherwise be payable to the employee. In *Yashveer Singh* (1993 Lab.I.C.44) the court directed payment of Rs.75000/- in view of reinstatement with back wages. In *Naval Kishor* [1984 (II) LLJ 473] the Apex Court observed that in view of the special circumstances of the case adequate compensation would be in the interest of the appellant. A sum of Rs.2 lac was awarded as compensation in lieu of reinstatement. In *Sant Raj* [1985 (II) LLJ 19] a sum of Rs.2 lac was awarded as compensation in lieu of reinstatement. In *Chandu Lal* (1985 Lab.I.C.1225) a compensation of Rs.2 lac by way of back wages in lieu of reinstatement was awarded. In *Ras Bihari* (1988 Lab.I.C.107) a compensation of Rs.65000/- was granted in lieu of reinstatement, since the employee was gainfully employed elsewhere. In *V.V.Rao* (1991 Lab.I.C.1650) a compensation of Rs.2.50 lac was awarded in lieu of reinstatement.

63. Claimant rendered two years' continuous service to the Institute, besides other spells which fell short of 240 days. His services were dispensed with in the year 2001 and he had to fight for redressal of his grievance. He was a young man, when he was engaged by the Institute. Now, he had crossed maxima of age, required for recruitment in Government service. Keeping in view all these facts, I am of the view that an amount of Rs.75,000.00 as compensation in lieu of reinstatement in service, would meet the ends of justice. The Institute shall pay aforesaid amount of compensation to the claimant in lieu of his reinstatement in service. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated: 14.11.2013

Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 24 जनवरी, 2014

**का.आ. 500.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एतद्वारा पुरस्कार प्रकाशित करता है (संदर्भ संख्या 94/2000) सुपरिंटेंडिंग इंजीनियर, टेलिकॉम सिविल सर्किल, पटना के प्रबंधन के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, धनबाद के पंचाट (संदर्भ संख्या 94/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-1-2014 को प्राप्त हुआ था।

[सं. एल-40012/237/2000-आई आर (डीयू)]  
पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 24th January, 2014

**S.O. 500.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 94/2000) of the Central Government Industrial Tribunal/Labour Court No. 2, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the Management of The Suptd. Engineer, Telecom Civil Circle, Patna and their workman, which was received by the Central Government on 20-1-2014.

[No. L-40012/237/2000-IR (DU)]

P. K. VENUGOPAL, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

**PRESENT:** Shri Kishori Ram, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947.

#### REFERENCE NO. 94 OF 2000

**PARTIES :** Shri Hari Nandan Sharma,  
Vill. Gauri Pundah, Fatuha, Patna

Vs.

Suptd. of Engineer (H.Qr)  
Telecom Civil Circle,  
Abdul Hai Commercial Complex,  
Exhibition Road, Patna

#### APPEARANCES:

On behalf of the workman/Union : Mr. S.N. Goswami,  
Ld. Advocate

On behalf of the Management : Mr. Sishil Kumar,  
Ld. Advocate

State : Jharkhand Industry : Telecommunication

Dated, Dhanbad, the 27th Dec., 2013.

#### AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec. 10(1) (d) of the LD. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-40012/237/2000-IR(DU) dt.29.08.2000.

#### SCHEDULE

"Whether the action of the management of Telecom Deptt. in terminating the services of Shri Hari Nandan Sharma . w.e.f., 14.1.97 is justified? If not to what relief the workman is entitled?"

2. The case of workman Hari Nandan Sharma stated in his written statement is that he had been continuously working as permanent Group "D" staff since 2.9.94 against permanent vacancy like permanent workman for eight hours a day, yet the management illegally designated him as a casual workman. Despite his several representations to the management for his regularization, payment of wages and other benefits at par with other Group "D" workmen, and though on repeated insistence, it was agreed to pay wage for the holiday, the management unreasonably and illegally terminated his service w.e.f., 14.1.1997 in utter violation of the mandatory provision of Sec. 25-F and N of the I.D. Act. When he made several representations before the Management against the illegal and arbitrary termination of service, the industrial dispute raised by the workman at last due to adamant attitude of the management failed in its reconciliation, resulted in the reference for adjudication. The action of the management, vindictive and anti-labour, was illegal and unjustified.

3. The workman in his rejoinder categorically denying the allegations of the management has stated that he was getting the wages and other benefits; he had put in more than 240 days attendance in each calendar year. The Telecom Department is an industry as per the settled law of Hon'ble Supreme Court, so the reference is maintainable on the facts and laws.

4. Whereas the case of the O.P./Management with specific denials is that workman Hari Nandan Sharma was engaged as a Daily Wager part time peon by the Asstt. Engineer©, Telecom, Civil Sub-division No. 2, Gaya from 24th Sept., 1994 to 1997 as specified i.e., for 138, 211 and 116 days during the period from Sept., 1994 to March, 1995, accordingly in the year 1995-96 and 1996-97 respectively. Since he was engaged for Gaya on purely temporarily and part time, and the class IV was posted at Jamshedpur Sub-Division. So acceptance of service of the workman does not arise. The petition of the applicant was unconsiderable; hence his case was terminable without any consideration, so the applicant is not entitled to continue his service based on part time and temporary for short time. The engagement of the workmen was purely temporary and part time for 6 hours only, so termination of

the workman was bonafide, legal and justified. It was neither vindictive nor anti-labour policy nor against the mandatory provision of Sec. 25 F and N of the I.D. Act. The workman was not given any relief before the Regional Labour Commissioner ©, Patna, who observed the Deptt. of Telecommunication does not come as an Industry under the Industrial Dispute Act as per the observation of the Hon'ble Supreme Court in 1998. The case of the workman is unmaintainable, so he is not entitled to any relief.

#### FINDING WITH REASONS

5. In the Reference, WW Hari Nandan Sharma, the workman for his own sake, and MWI Ashok Kumar, the S.D.O. (Civil), BSNL, Civil Sub-division I Gaya for the O.P./Management have been examined.

Mr. S.N. Goswami, the Learned Counsel for workman Hari Nandan Sharma as per his written argument has argued that the workman had been serving as the peon since his appointment against permanent vacancy from 2.9.94 putting in more than 240 days each year until this illegal termination from his service w.e.f. 14.1.97 without any show cause or any payment of compensation for it, so he is entitled to reinstatement in his service with back wages. Whereas assailing the argument of Mr. Goswami, Mr. Sushil Kumar, the Learned Advocate for the O.P./Management has contended that the workman (WWI) in his cross-examination has clearly admitted not to possess any paper or any I.D. to show his appointment as Group D Staff by the Management for the period of his work, nor his name was forwarded by the Employment Exchange to the management for the appointment, nor the management had advertised any vacancy for any such appointment, rather as per the statement of MWI Ashok Kumar, the S.D.O. (Civil), B.S.N.L., Civil Sub-Division I at Gaya has affirmed that the workman was temporarily engaged for some days on daily basis for which his wage was paid to him directly by the S.D.E. through ACG.17 and since he was never appointed under DOT or BSNL, there is no matter of his termination.

6. After hearing both Learned Counsels for their respective parties and perusal of the oral statements of workman Hari Nandan Sharma (WWI) and Mr. Ashok Kumar (MWI), I find that the status of the workman as a purely temporary worker on daily basis who was paid his wage through vouchers for his work done is indisputable. The workman has not any proof of his continuous working as peon for 240 days in a calendar year concerned, nor any chit of document to show his appointment permanently against permanent vacancy, so no applicability of the word "termination" applies to the case. Since the workman was a daily rated temporary worker who never completed minimum 240 days in a calendar year preceding the date of the reference as required and defined under Sec. 25 B (a) (ii) for "continuous service" under the Industrial Disputes Act,

1947, so the unengagement of the temporary workman working for some days only cannot be a termination of his temporary service at any moment in the case, as he was never legally appointed by the Management.

In result, it is,

#### ORDERED

That Award is and the same be passed that since workman Hari Nandan Sharma was purely a temporary casual worker for some days who was never in continuous service as a peon for minimum period of relevant calendar year under Sec. 25 B (a) (ii) of the I.D. Act 1947, no question of the alleged action of the Management of Telecom Dept. in allegedly terminating his service w.e.f. 14.1.97 as justified or unjustified arises. The case is completely devoid of merits. Hence, the workman is not at all entitled to any relief.

KISHORI RAM, Presiding Officer

नई दिल्ली, 24 जनवरी, 2014

**का.आ. 501.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एतद्वारा पुरस्कार प्रकाशित करता है (संदर्भ संख्या 14/2008) डायरेक्टर, दूरदर्शन केन्द्र, रांची के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, धनबाद के पंचाट (संदर्भ संख्या 14/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-1-2014 को प्राप्त हुआ था।

[सं. एल-42012/74/2006-आई आर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 24th January, 2014

**S.O. 501.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 14/2008) of the Central Government Industrial Tribunal/Labour Court, No. 2, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the Management of The Director, Doordarshan Kendra, Ranchi and their workman, which was received by the Central Government on 20-1-2014.

[No. L-42012/74/2006-IR (DU)]

P. K. VENUGOPAL, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.2) AT DHANBAD

**PRESENT:** Shri Kishori Ram, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I. D. Act, 1947

**REFERENCE NO. 14 OF 2008**



**PARTIES :** Pradeep Chandra Poddar,  
HEC, PO : Dhurwa, Ranchi  
Vs.  
Director,  
Doordarshan Kendra,  
Ranchi, Jharkhand

#### APPEARANCES:

On behalf of the : Mr. S. N. Goswami,  
workman/Union Ld. Advocate  
On behalf of the : Mr. D. K. Verma,  
Management Ld. Advocate

State : Jharkhand

Industry : Information & Broadcasting

Dated, Dhanbad, the 26th August, 2013

#### AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec. 10 (1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No.L-420 12/74/2006-IR(DU) dt.09.01.2007

#### SCHEDULE

“Whether the action of the management of Doordarshan Kendra, Ranchi in terminating the services of Shri Pradeep Chandra Poddar, w.e.f. 9.1.1991 is legal and justified? If not, what relief the workman is entitled to?”

2. The case of workman Pradeep Chandra Poddar is that on sponsoring the name of the workman by the Employment Exchange at the request of the management of Doordarshan Kendra, Ranchi, for the post of Clerk-cum-Typist against its permanent vacancy, he was interviewed and selected for the post. He joined as Clerk-cum-Typist on 01.05.1986 against permanent vacancy. Since then he has been continuously working. A certificate of his engagement from 01.05.1986 to 30.04.1988 was issued by the Management. When the workman began to demand regular pay scale and other benefits at par with other employees of the establishments, he was not further issued his subsequent experience Certificate. The management annoyed with his repeated insistence for the aforesaid facilities just as other 23 similarly situated workers had, terminated his services w.e.f. 8.1.1991 but they were regularized as per the Award dt.26.09.2011 passed by the CGIT No.1, Dhanbad, in the Reference No. 249/1990 they had brought in challenge to their termination. Despite several earlier representations and later on representation to the management for his reinstatement and back wages, it was not responded, rather management orally informed

him not to consider his case until decision of the Hon'ble High Court in their case instituted as a challenge to the said Award, not only Hon'ble High Court but also Hon'ble Supreme Court also confirmed the Award. Thereafter again the representation of the workman for his case similar to that of the aforesaid workmen for his reinstatement was unconsidered by the management by not taking positive steps for redressal of his grievance.

3. At last as per the order dt. 21.9.2000 of the Hon'ble High Court passed in his CWJC No.1041/99(R), the workman withdrew it, and filed an application before the Central Administrative Tribunal (CAT). Accordingly as per the order of the C.A.T. dt. 7.12.2004 in the O.A.No.169/02, he was advised to move the legal forum, i.e., Industrial Tribunal for redressal of his grievance, as also upheld by the Hon'ble High Court, Ranchi in the W.P.(S) No.635/05 filed by him as per its Order dt.5.1.2006, holding the finding of the Industrial dispute as an Industrial Tribunal under the purview of the Industrial Tribunal Act, and the CAT having no jurisdiction. Consequently, the workman raised the present dispute before the Asstt. Labour Commissioner ©, but the same due to adamant attitude of the management failed, resulting in the reference for an adjudication. The petitioner had been continuously working from 01.05.1986 to 8.1.1991 during which by putting more than 240 days attendance in a calendar year. But the termination of his service w.e.f. 9.1.1991 by the management without following the mandatory provision of Sec.25 F of the Industrial Dispute Act, is neither legal nor justified and against the principle of natural justice.

4. The workman in his rejoinder has specifically denied all the allegations of the O.P./Management, and stated that disengagement of an employee and termination stand on the same footing. He was a permanent workman working against permanent vacancy. The number of attendance may be a consideration for regularization, but by showing poor attendance, the management has no legal right to terminate service of the workman.

5. Whereas the contra case of the O.P./Management with categorical denials is that reference being illegal is unsustainable. The applicant has moved for Industrial Dispute after lapse of 15 years highly belatedly. He has now attained the age of 43 years 10 months as on 09.11.2006. The workman was purely engaged on assignment basis as and when required. There is no scheme formulated by the Government of India for regularization of such casual workers who have rendered their service on the casual basis only for five to ten days in a month, and they have not completed 240 days of work in any calendar year. As per letter No. 401/2/93-5 dt.30.09.93 issued by Director General Doordarshan Kendra, Mandi House, New Delhi the guidelines have been framed formulating a scheme for regularization of casual workers, and for grant of temporary status. The workmen has break in service in

every month, as he was engaged on a casual basis only from 25.8.1986 as also for assignment basis as and whenever required. The allegation of the workman about sponsoring his name by Employment Exchange for Doordarshan Kendra, Ranchi, inapplicable, in the case, as the post of Tabulator Clerk comes under Group C category and as per the recruitment Rules, the appointment is to be made on the recommendation of the Staff Selection Commission, but not on sponsoring by the Employment Exchange. The case of the petitioner stands not similar to the case of 23 persons who were in Group D, was referred by the CGIT. No.1, Dhanbad under the Industrial Dispute Act.

6. Further alleged on behalf of the O.P./Management is that the Director Doordarshan had rightly submitted his counter affidavit Para 5 before the Hon'ble High Court, Ranchi Bench, concerning the Writ of the workman that he had filed it without exhausting internal remedy available under the provision of the Industrial Dispute Act, hence it was liable to be dismissed the Hon'ble Central Administrative Tribunal (CAT), Patna Bench, Patna (Ranchi Circuit Bench) as per order dt.31.10.2001 held that that cause of action arose in the case of the applicant against illegal termination as also for regularization in 1991 if not before that time, and the applicant sought to challenge his termination as well as non-regularization in the O.A. filed in the year 2001 which is grossly barred by the limitation. On consideration of the representation filed by the petitioner, the management as per its Doordarshan Kendra, Ranchi letter dt.18.4.2002 had intimated that no other persons similarly situated in fact and circumstances have been regularized. At last the O.A.No.169/2002 and the Writ W.P.(S)No.635/2005 again filed by the petitioner before the CAT and the Hon'ble Jharkhand High Court were dismissed on 17.12.2004 and 5.1.2006 respectively which are binding, so the petitioner can not seek any relief before the present Tribunal.

7. Besides, the allegation of the O.P./management is that the petitioner had never worked on assignment basis whenever required for more than 10 days in a month between the period 25.8.1986 to 8.1.2001, nor completed 240 days of working a calendar year as evident from his working days: 30,110,90,100,59 and 8 days in the years 1986 to 1991 respectively. In fact, it is not a case of termination; rather it is a case of disengagement. The petitioner has moved for Industrial Dispute after lapse of 15(fifteen) years which being barred by limitation is unsustainable.

8. The O.P./Management in its rejoinder has categorically denied the allegations of the workman, and stated that the workman's initial C.W.J.C.No.1041/1999(R) was dismissed as per the Order dt.21.9.2000 just as his case before the C.A.T., Patna Bench, Ranchi was dismissed again his W.P.(C) No. 635/2005 was also dismissed as per the order dt. 05.01.2006. In the event of an adjudication by the Hon'ble High Court, the Sub-ordinate Court should refrain

from entering into the merits of the case. Moreover, the workman had not taken any leave or liability from the Hon'ble High Court for moving before the Tribunal. The workman now about 44 years is not entitled to any relief. He had appeared for test, practical, written, interviewed at the office of Doordarshan Kendra, Ranchi on 14.05.1986 but the oral test (interview) was further shifted from 12.06.1986 to 09.07.1986 at 12 a.m. The case of the workman being devoid of merits is liable to be rejected.

### FINDING WITH REASONS

9. In the reference case, WWI Pradip Chandra Poddar, the workman for himself and MW1 Pradeep Kumar Dutta, the UDC and MW2 Sheo Kumar Singh, the Admn. Officer for the O.P./management have been examined respectively. On bringing the case of the applicant Pradip Chandra Poddar face to face with that of the O.P./Management, the indisputable facts are that after withdrawal of his CWJC No.1041/1991 (R) as per Order dt.21.9.2000 of the Hon'ble High Court at Patna (Ranchi Bench)(Ext.W4/1), the petitioner filed the D.A.10/2000(R) before the Central Administrative Tribunal(CAT), Patna Bench for implied regularization. But it was disposed of as per Order dt.31.10.2001 of the C.A.T. holding it grossly barred by limitation in view of his alleged termination in the year 1991, with observation permitting him to approach the Respondents for regularization, if any person similarly situated and junior to him has been regularized in recent years (Ext.W-2). Therefore, as per the Office Memo of the Management dt.18.04.2002 (Ext.W.6) in response to the applicant's applications dt.12.11.2001 and 11.12.2001, he was intimated of non-regularization of any other person similarly situated in Doordarshan Kendra, Ranchi in recent years, his case was not covered under the existing Scheme for regularization of casual Artists, and non-existing of sanctioned post of Typist-cum-Clerk at Doordarshan Kendra, Ranchi. though he had also earlier filed his three representations (Ext.W.5 series) for it.

The O.A. No. 169/2002 filed by the petitioner was dismissed as per Order dt.17.12.2004 of the CAT, Circuit Court at Ranchi(Ext.W-4/3), with observation for him to have recourse to any other alternative legal Forum for redressal of his grievance.

Likewise consequent upon the dismissal of the petitioner's another W.P.(S)No.635/2005 as per Order dt.05.01.2006 of the Hon'ble High Court of Jharkhand at Ranchi (Ext.WA), the present Industrial Dispute came into existence on 09.01.2007.

10. According to the statement of workman Pradeep Chandra Poddar (WW1), he was appointed on sponsoring of his name by the Employment Exchange for the post of Clerk-cum-Typist, following his selection for it by the Management and he continuously worked accordingly under and for the management of Doordarshan Kendra

Ranchi since his appointment on 01.05.1986 till 8.1.1991, but without any notice or any compensation, the management terminated his services, though his 23 colleagues, some of them senior, working in the same category after the verdict of the Court concerned were regularized. The claim of the workman for his regularization with full back wages appears to be based on the two factors:

Firstly, his documents, i.e., his Identity Card (Ext.W.1), Service Certificate dt.6.5.1988 (Ext.W.2 with objection), the letters dt. 29.4.1986 and 2.7.1986 issued by the Management of Doordarshan Kendra, Ranchi for his written test and interview for the post of Tabulator Clerk (Ext.W.3 & 3/1) respectively, and

Secondly, the regularization of his 23 colleagues in the same category as per the Verdict (Award) of the Court (Tribunal) concerned. But the workman has miserably failed to establish which colleague in similarly situated was regularized. In this regard, it is indisputable fact that as per the Office Memo of the Management Doordarshan No. RAN/DDK/1(2)2002-03 dt.18.04.2002 to the workman (Ext.W.6) in response to the application dt. 12.11.2001 and 11.12.2001 following the Order of the CAT, Patna, dt.31.10.2001, he was intimated about non-regularization of other persons similarly situated in Doordarshan Kendra, Ranchi recently, his case not covered under the existing scheme for regularization of casual Artist in Doordarshan as "Typist-cum Clerk" "in which capacity he was engaged on casual basis does not belong to the erstwhile Staff Artist Category", and no sanctioned post of Typist-cum-Clerk exists at Doordarshan Kendra, Ranchi, in that circumstances his request for regularization was not acceded.

So far the aforesaid documents (Extt. W.1-3 series) of the workman are concerned, each of them clearly relates to his status as a casual General Asstt. (Typist) as also certified w.e.f. 01.05.1986 to 30.04.1988 on casual basis. There is no dispute that the workman was paid by the vouchers Extt.M-1 series, the three ones as Casual general Asstt. under his receipt signature for 10 and 11 days work done per day Rs.50 in the month of July,1987, Feb & March, 1989 respectively.

11. The statement of MW1 Pradeep Kumar Dutta, the U.D.C. at Doordarshan Kendra, Ranchi affirms non-maintenance of any Attendance register for casual worker, the payment of wages to the casual worker through vouchers verified by the Supervisor/Controlling Authority of the section of the management in a month on the basis of the contract and the contract of the workman for his engagement according to the needs. He (MW1) also clearly stated the term the assignment means instrument of work such as typing for a specified period; the recruitment rules of the management provide for filling up the permanent vacancy of Tabulator Clerk post on recommendation of the

Staff Selection Commission Gr.C but the workman performed the job of Typist General Asstt. for which, his name was sponsored by the Employment Exchange for casual worker.

Likewise the statement of MW2 Shoe Kumar Singh, the Administrative Officer in the office of the Director, Doordarshan Kendra Ranchi evidently corroborates the statement of MW1 Pradip Kumar Dutta. He (MW2) has to state that the workman had worked 10 days per month in July, Nov., 1987 Nov., 1988, Feb, March, July, Oct., Dec., 1989 and 1990 and 9 days in Jan., 1990 (Ten photocopies of Replysheet (Ext.M.2 series) for which he was paid his wages at the rate of R.50 per day though contract sheets Voucher (Ext.M.1 series) and Reply Sheets under the signatures of the contract authority and of the workman as well the photocopies of ten Reply sheets (Ext.M.2 series) filed by the Management for the period from 01.07.1987 to 28.02.1992, as their originals were destroyed as per the Rules of the Company after six years as per the record. The management witness (MW2) has though asserted the forwarding the name of the workman by the Employment Exchange concerned and the issuance of his interview letter as the Tabulator Clerk, yet affirmed his appointment on contract basis as there is no post of Tabulator Clerk in their department, and the meaning of the term 'assignment' as 'engagement' whenever required.'

12. Drawing my attention to the settled laws as held by the Hon'ble Apex Court in the case of Delhi Cloth and General Mill Co. Ltd., Vs. their workmen reported in S.C.L.J. Vol. 4 page 2307 (SC), the workman as per his written argument has to emphatically submit that the Tribunal must confine its adjudication to points of disputes referred; one of the issue framed on the basis that there was a strike and there was a lock-out workman cannot challenge existence of strike, and management can not deny declaration of lock out ... 'held the parties can not be allowed to go a stage further and contended that the foundation of the dispute mentioned in the order of the reference was to non-existent, and that true dispute was something else. Further stress of the workmen is that since he was selected after interview for the post of Tabulator Clerk following the sponsorship of his name by the Employment Exchange, he continuously worked from 1.5.1986 till 8.1.1991, and thereafter he was illegally terminated by the Management w.e.f. 9.1.1991 contrary to the mandatory provision of the Sec.25 F of the Industrial Dispute Act, 1947.

Whereas the contention of the O.P./Management as per its written argument is that the workman was engaged on casual basis only from 25.8.1986 as on assignment basis, as and whenever required and any assignment did not exceed ten days in a month as evident from his work on assignment basis - 30, 110, 90, 100, 59 and 8 days during the year 1986 to 1991 respectively as specifically stated by MW1 Pradeep Kumar Dutta. As such he never completed 240 days of work in a calendar year. There is no such



scheme formulated by the Government of India for regularization of such casual workers rendering their services on casual basis only for five to ten days a month. The post of the Tabulator Clerk comes in Group C Category, and as per the Recruitment Rules the appointment is to be made only on the recommendation of the Staff Selection Commission, but not on sponsoring by the Employment Exchange; the case of the petitioner does not stand on the same similar footing as that of 23 persons.

As the terms of the reference relating to termination of services of the workman involves the point whether the workman has acquired the status of a permanent worker as Casual General Assistant (Typist) as an incidental issue to it. But in the face of the workman's admission about the three vouchers with its payment of wages (Ext. M.1 series) other Reply sheet of the Vouchers ( Ext. M.2 series) under his signatures, it stands crystal clear that the workman worked as a casual General Assistant on assignment basis worked for not more than ten days each month during the said period of August, 1986 to January, 1991. So the application of Sec. 25F of the Industrial Tribunal presupposes the first requisite that 'workman must have been in continuous service for not less than one year, and the continuous service as defined under Sec. 25 B 2(a)(ii) of the said Act means" 'two hundred and forty days in any other case."

In the case, it is an acknowledged fact that since the workman was casually employed for ten days a month on assignment basis, he had never any continuous service for one year preceding to his Industrial Dispute. In result, it is barely awarded that the question whether the action of the management of Doordarshan Kendra, Ranchi, in terminating the services of Sri Pradeep Chandra Poddar w.e.f. 9.1.1991 as legal or justified does not arise in view of the lack of his continuous service. It is not a case of his termination; rather it is a case of his non-engagement unemployment on assignment basis. Hence the workman is not entitled to any relief.

KISHORI RAM, Presiding Officer

नई दिल्ली, 5 दिसम्बर, 2013

**का.आ. 502.**—राष्ट्रपति न्यायमूर्ति श्री सत्य पूत मेहरोत्रा, को 14-11-2013 (पुर्वाह्न) से केन्द्रीय सरकार औद्योगिक न्यायाधिकरण-सह-श्रम न्यायालय नं. 1, मुम्बई के पीठसीन अधिकारी के रूप में 65 वर्ष की आयु प्राप्त होने तक जो की 16-10-2016 है अथवा अगले आदेशों तक, जो भी पहले हो, नियुक्त करते हैं।

[सं. ए-11016/4/2012-सीएलएस-II]  
राजेश कुमार, अवर सचिव

New Delhi, the 5th December, 2013

**S.O. 502.**—The President is pleased to appoint Justice Satya Poot Mehrotra as Presiding Officer of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Mumbai w.e.f. 14-11-2013 till he attains the age

65 years i.e. up to 16-10-2016 or until further orders, whichever is earlier.

[No.A-11016/4/2012-CLS-II]

RAJESH KUMAR, Under Secy.

नई दिल्ली, 27 जनवरी, 2014

**का.आ. 503.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सी सी एल के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 23/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-1-2014 को प्राप्त हुआ था।

[सं. एल-20012/07/2007-आई आर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 27th January, 2014

**S.O. 503.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 23/2007) of the Central Government Industrial Tribunal/Labour Court, No. 1, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the Management of CCL and their workman, which was received by the Central Government on 27-1-2014.

[No. L-20012/07/2007-IR (CM-I)]

M. K. SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.1), DHANBAD

IN THE MATTER OF A REFERENCE U/S 10(1) (D)  
(2A) OF I.D. ACT, 1947.

#### Ref. No. 23 of 2007

Employers in relation to the management of Sirka Colliery  
M/s C.C.L.

AND

Their workmen.

**Present :** Sri Ranjan Kumar Saran, Presiding Officer

#### Appearances:

For the Employers : Sri D.K. Verma Advocate

For the workman : Sri D. Mukherjee, Advocate

State : Jharkhand

Industry : Coal

**Dated 6-12-2013**

#### AWARD

By Order No.1-20012/07/2007-IR (CM-I), dated 13/17-04-2007, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following



disputes for adjudication to this Tribunal:

### SCHEDULE

(i) "Whether the action of the management of Sirka Colliery of M/s. CCL in not providing dependent employment to Smt. Fulia Devi W/o Late Sewa Mahto, Ex-coal Cutter, under the provisions of para 9.3.2 of NCWA-V is justified and legal? (ii) If not, to what relief is the dependent wife of the concerned deceased employee entitled?"

2. The case is received from the Ministry of Labour on 01.05.2007. After receipt of reference, both parties are noticed, the Sponsoring Union files their written statement on 10.08.2007. And the management files their written statement -cum-rejoinder on 30.09.2008.

3. The short point involved in the case is the dependents employment as the husband of the applicant died during service. Though the applicant applied for job in place of her husband, she was offered monetary compensation in lieu of job as she was aged more than 45 years. But if the claim of the application of the applicant will be scrutinized it will be seen, that she was below 45 years at the time she applied for job. Therefore there is no reason to deny the claim of the applicant.

4. Considering the facts and circumstances of this case, I hold that the action of the management of Sirka Colliery of M/s. CCL in not providing dependent employment to Smt Fulia Devi W/o Late Sewa Mahto Ex-Coal Cutter under the provision of of para 9.3.2 of NCWA-V is not justified. Hence the management is directed to give the job to the applicant as deem fit proper, after observing the minimum formalities within 3 months from the date of publication of the award.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 27 जनवरी, 2014

**का.आ. 504.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार टाटा स्टील लिमिटेड के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 33/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-1-2014 को प्राप्त हुआ था।

[सं. एल-20012/01/2010-आई आर (सीएम-1)]  
एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 27th January, 2014

**S.O. 504.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 33/2010) of the Central Government Industrial Tribunal/Labour Court,

No. 1, Dhanbad now as shown in the Annexure in the Industrial Dispute between the Management of M/s. Tata Steel Ltd. and their workman, which was received by the Central Government on 27-1-2014.

[No. L-20012/01/2010-IR (CM-I)]

M. K. SINGH, Section Officer

### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.1), DHANBAD

IN THE MATTER OF A REFERENCE U/S 10(1) (D) (2A)  
OF I.D. ACT, 1947.

**Ref. No. 33 of 2010**

Employers in relation to the management of Jamadoba Colliery M/s. Tata Steel Ltd.

### AND

Their workmen.

**Present:-** Sri Ranjan Kumar Saran, Presiding Officer

### Appearances:

For the Employers. :- Sri D. K. Verma, Advocate

For the workman. :- Sri S. Paul, Advocate

State : Jharkhand

Industry : Coal

Dated 9-12-2013

### AWARD

By Order No. L-20012/01/2010-IR(CM-1), dated 16-3-2010, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this tribunal :

### SCHEDULE

1. "Whether the action of the management of Jamadoba Colliery of M/s. Tata Steel Limited in dismissing Shri Atique Khan On settler from the Service of the Company w.e.f. 05.01.2009 is justified and legal? (ii) To what relief is the workman concerned entitled?"

2. The case is received from the Ministry of Labour on 09.04.2010. After receipt of reference, both parties are noticed, the Sponsoring Union /workman files their written statement on 13.05.2010. And the management files their written statement -cum- rejoinder on 05.05.2011.

3. This is a case of dismissal of the workman on the ground that he illegally gave electric connection from his quarters to his near by quarters. The enquiry conducted by the department held as fair and proper. Therefore it is to be seen from the materials as to whether the dismissal of the workman was fair and proper.

4. In this case the MW-1 the Enquiry Officer has stated that before him the quarters allotment register was not produced. But he has stated that on the basis of town management depts Y.K. Panda C.S was filed before him.

5. Before the Enquiry Officer Sri Y.K. Panda was not examined. The enquiry Officer has stated that he has not given any opportunity the workman to adduce his witness of defence. Of course the departmental enquiry has been declared fair and proper. But material produced before the Tribunal is not sufficient to uphold the dismissal of the management, proper specially when neither Y.K. Panda nor quarters allotment register produced before this Tribunal, Hence the dismissal of the workman is not proper.

6. Considering the facts and circumstances of this case, I hold that the action of the management of Jamadoba Colliery of M/s. Tata Steel Limited in dismissing Shri Atique Khan On setter from the Service of the Company w.e.f. 05.01.2009 is not justified. Hence he be reinstated in service, without giving him any back wages what so ever.

This is my award

R. K. SARAN, Presiding Officer

नई दिल्ली, 27 जनवरी, 2014

**का.आ. 505.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी सी सी एल के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, 1, धनबाद के पंचाट (संदर्भ संख्या 16/1992) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-1-2014 को प्राप्त हुआ था।

[सं. एल-20012/212/1991-आई आर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 27th January, 2014

**S.O. 505.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 16/1992) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure in the Industrial Dispute between the Management of M/s. BCCL and their workman, received by the Central Government on 27-1-2014.

[No. L-20012/212/1991-IR (CM-I)]

M. K. SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

Reference: No. 16/ 1992

In the matter of reference U/s 10 (1) (d) (2A) of I. D. Act. 1947.

Employer in relation to the management of Loyabad Coke Plant M/s. BCCL

AND

Their workmen

**Present:** Sri R.K.Saran Presiding Officer

#### Appearances:

For the Employers : Sri D.K.Verma, Advocate

For the workman. : Sri S.C.Gour, Rep.

State: Jharkhand

Industry : Coal

Dated, the 12th November, 2013

#### AWARD

By Order No. L-20012/212/ 91-IR (C-I) dated Nil, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

#### SCHEDULE

" Whether the action of the Management of Loyabad Coke Plant of M/s. BCCL in demoting Shri Kuldeep Chouhan from Clerical Grade-I to Clerical Grade-II is justified? If not to what relief the workman is entitled?"

2. After receipt of the reference, both parties are noticed. But appearing for certain dates none appears subsequently. Case remain pending. Representative of Union is submitted that the workman is not interested, It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R.K. SARAN, Presiding Officer

नई दिल्ली, 27 जनवरी, 2014

**का.आ. 506.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ई सी एल के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 9/1992) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-1-2014 को प्राप्त हुआ था।

[सं. एल-20012/175/1991-आई आर (सी-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 27th January, 2014

**S.O. 506.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 9/1992) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure in the Industrial Dispute between the Management of M/s. ECL and their workman, received by the Central Government on 27-1-2014.

[No. L-20012/175/1991-IR (C-I)]

M. K. SINGH, Section Officer

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL No.1, DHANBAD****Reference: No. 9/ 1992**

In the matter of reference U/s 10 (l) (d) (2A) on I. D. Act. 1947.

**Parties:** Employer in relation to the management of Mugma CCC Stores, M/s. E.C.L

AND

Their workmen

**Present:** Sri R.K.Saran, Presiding Officer

**Appearances:**

For the Employers :- None

For the workman. :- None

State: Jharkhand. Industry- Coal

Dated, the 12th November, 2013

**AWARD**

By Order No. L-20012/175/91-IR (C-I) dated Nil, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

**SCHEDULE**

"Whether Sh. Anandi Nath Das and 12 others working in the Mugma Central Colliery Cooperative store are to be treated as workmen of M/s. Eastern Coalfields Ltd. and whether the demand that these persons be regularized in the services of the said management is justified? If so, to what relief are these persons entitled?"

**ANNEXURE-II**

List of the workers of mugma c.c.c. Stores, Nirsha Chatti, Dhanbad whose services should be regularised:-

(1) Anandi Nath Das, (2) Himadri Sarkar, (3) Tapeswar Singh, (4) Anand May Malakar, (5) Nimal Chand Mondal, (6) Bholu Mahato, (7) Laksmi Narayan Singh, (8) Ram Pukar Singh, (9) Budhan Prasad, (10) Jyotish Pd. Sah, (11) Gopal Chandra Mondal, (12) Shio Shankar Jha, (13) Badal Chandra Nalakar.

2. After receipt of the reference, both parties are noticed. But appearing for certain dates none appears subsequently. Case remain pending. It is felt that the disputes between the parties have been resolved in the

meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 27 जनवरी, 2014

**का.आ. 507.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सी सी एल के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय न. 1, धनबाद के पंचाट (संदर्भ संख्या 14/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-1-2014 को प्राप्त हुआ था।

[सं. एल-20012/139/2004-आईआर (सी-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 27th January, 2014

**S.O. 507.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (R.ef. No. 14/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the Management of CCL and their workman, received by the Central Government on 27-1-2014.

[No. L-20012/139/2004-IR (C-I)]

M. K. SINGH, Section Officer

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL No.1, DHANBAD**

In the matter of reference U/s 10(1)(d)(2A) of I.D. Act. 1947.

**Reference No. 14 of 2005**

Employer in relation to the management of N.S.D Colliery of M/s. CCL.

AND

Their workman

**Present :-** Sri R.K.Saran, Presiding Officer

**Appearances:**

For the Employers : Sri D.K.Verma, Advocate

For the Workman : Sri D.Mukherjee, Advocate

State : Jharkhand Industry : Coal

Dated 10-12-2013

**AWARD**

By Order No.-L20012/139/2004-IR (C-I), dated 17/12/2004 the Central Govt. in the Ministry of Labour has,

in exercise of powers conferred by clause (d) of Sub -Section (I) and disputes Sub-Section (2.A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

#### SCHEDULE

"Whether the action of the management of N.S.D Colliery of M/s. CCL to dismiss Shri Bhuwan Nag, Dumper Operator Gr. II "C" From the service of the company w.e.f. 31.03.94 is fair, legal and just? If not, to what relief is the workman concerned entitled?"

2. The case is received from the Ministry of Labour on 03.01.2005. After receipt of reference, both parties are noticed, the workman files their written statement on 16.06.2005. And the management files their written statement-cum-rejoinder on 21.05.2007. The point involved in the reference is that the workman has been dismissed from his services.

3. During preliminary hearing it is revealed that the case is dismissal of workman for long absence on duty. But he has already out of service for 19 years. It is felt to give another chance to the workman to serve.

4. Considering the facts and circumstances of this case, I hold that he be taken into job as a fresh employee. Therefore the question of back wages does not arise at all.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 27 जनवरी, 2014

**का.आ. 508.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी सी सी एल के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय न. 1, धनबाद के पंचाट (संदर्भ संख्या 40/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-1-2014 को प्राप्त हुआ था।

[सं. एल-20012/95/2010-आई आर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 27th January, 2014

**S.O. 508.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 40/2011) of the Central Government Industrial Tribunal/Labour Court, No. 1, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the Management of M/s. BCCL and their workman, which was received by the Central Government on 27-1-2014.

[No. L-20012/95/2010-IR (CM-I)]

M. K. SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.1), DHANBAD

IN THE MATTER OF A REFERENCE U/S 10(1) (D)  
(2A) OF I.D. ACT, 1947.

**Ref. No. 40 of 2011**

Employers in relation to the management of  
Gopalichuk Colliery, M/s. BCCL

**AND**

Their workmen

**Present :** Sri Ranjan Kumar Saran, Presiding Officer

#### Appearances:

For the Employers. : Sri D. K. Verma, Advocate

For the workman. : Sri R.R. Ram, Rep.

State : Jharkhand

Industry : Coal

Dated. 10-12-2013

#### AWARD

By Order No.L-20012/95/2010-IR (CM-I), dated. 08/08/2011, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub -section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

#### SCHEDULE

"Whether the action of the management of Gopalichuk Colliery of M/s. BCCL in not correcting the date of birth of Sri Ramdhiraj Ram, Electric Mistry as 01.07.1956 is fair and justified? To what relief the concerned workman is entitled?"

2. The case is received from the Ministry of Labour on 29.08.2011. After receipt of the reference both parties are noticed. The Sponsoring Union/workman files their written statement on 05.09.2011. Thereafter the management files their written statement-cum- rejoinder on 06.12.2012. The workman has examined himself as a witness.

3. The claim of the workman is, his date of birth as per his matriculation certificate 01.07.1956 instead of 10.03.1954. From the Service excerpt filed by the workman, it is found that the Date of Birth is scored and the same appears to be confusing.

4. As per MW-1 (Form "B" Register) he appointed as fitter helper on 10.03.1979. On closed scrutinized it is found that the date 05.03.1981 is not the joining date but it



is date of work distribution as fitter helper. And the workman concerned put his signature in the form "B" register.

5. The workman in his evidence marked WW-1, has stated that before his job he passed the matriculation examination. The workman in his evidence in chief has stated that he joined in job on 25.03.1981. But the photocopy of his High School certificate dated 04.08.1981 which has been granted by Uttar Pradesh Board, the workman was working during 1981. Then how he read appeared and passed from U.P. Board. He does not file any paper or permission granted by the management for his study.

6. The said certificate does not speak on what date the examination was conducted as to whether it was annual or supplementary examination. Moreover as per the evidence of the workman, he passed matriculation examination in the year 1981. But it is not known as to why the dispute was raised in the year 2007. Moreover the original matriculation certificate has not been filed. Therefore belated dispute appears to be malafide and the claim of workman is not at all tenable.

7. Considering the facts and circumstance of this case, I hold that the action of the management of Gopalchuk Colliery of M/s. BCCL in not accepting the date of birth of Sri Ramdhiraj Ram, Electric Mistry as 01.07.1956 is fair and justified. Hence he is not entitled to get any relief.

This is my award.

R.K.SARAN, Presiding Officer

नई दिल्ली, 27 जनवरी, 2014

**का.आ. 509.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी सी सी एल के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय न. 1, धनबाद के पंचाट (संदर्भ संख्या 18/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-1-2014 को प्राप्त हुआ था।

[सं. एल-20012/16/2009-आई आर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 27th January, 2014

**S.O. 509.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 18/2009) of the Central Government Industrial Tribunal-cum-Labour Court, No. 1, Dhanbad as shown in the Annexure in the Industrial Dispute between the Management of BCCL and their workman, received by the Central Government on 27-1-2014.

[No. L-20012/16/2009-IR (CM-I)]

M. K. SINGH, Section Officer

## ANNEXURE

### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 1), DHANBAD

IN THE MATTER OF A REFERENCE U/s 10(1) (D)  
(2A) OF I.D. ACT, 1947.

**Ref. No. 18 of 2009**

Employers in relation to the management of Mudidih Colliery, Sijua Area of M/s. BCCL

AND

Their workmen

**Present:-** SRI RANJAN KUMAR SARAN, Presiding Officer

#### Appearances:

For the Employers : Sri D.K. Verma, Advocate

For the workman : Sri S.K. Chamaria, Advocate

State : Jharkhand

Industry : Coal

Dated. 15-11-2013

#### AWARD

By Order No.L-20012/16/2009-IR -(CM-I), dated 30/03/2009, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub - section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

#### SCHEDULE

- (i) Whether the action of the management of Mudidih Colliery under Sijua Area of M/s. BCCL in dismissing Shri Kameshwar Dhoni., M/L from the services of the company w.e.f. 23.08.2004 is legal and justified?
- (ii) To what relief is the concerned workman entitled?"

2. The case is received from the Ministry of Labour on 13.04.2009. After receipt of reference, both parties are noticed, the workman files their written statement on 16.06.2009. The point involved in the reference is that the workman has been dismissed from his services.

3. During preliminary hearing it is revealed that the case is dismissal of workman for long absence on duty. He has already out of service for 9 years, It is felt to give another chance to the workman to serve.

4. Considering the facts and circumstances of this case, I hold that he be taken into job as a fresh employee. Therefore the question of back wages does not arise at all.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 29 जनवरी, 2014

**AWARD**

**का.आ. 510.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मुंबई पत्तन न्यास के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.2, मुंबई के पंचाट (संदर्भ संख्या 7/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-1-2014 को प्राप्त हुआ था।

[सं. एल-31011/11/2008-आई आर (बी-II)]  
रवि कुमार, अनुभाग अधिकारी

New Delhi, the 29th January, 2014

**S.O. 510.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 7/2009) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Mumbai as shown in the Annexure in the Industrial Dispute between the Management of Mumbai Port Trust and their workmen, received by the Central Government on 29-1-2014.

[No. L-31011/11/2008-IR (B-II)]

RAVI KUMAR, Section Officer

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL NO. 2, MUMBAI****PRESENT :** K. B. KATAKE, Presiding Officer**REFERENCE NO. CGIT-2/7 of 2009**

Employers in relation to the management of Mumbai Port Trust

The Chairman  
Mumbai Port Trust  
Port Bhavan  
S. V. Marg  
Ballard Estate  
Mumbai 400 001.

**AND**

Their Workmen

The Secretary  
Mb.P.T. Dock & General Employees Union  
Port Trust Kamgar Sadan  
Nawab Tank Road  
Mazgaon  
Mumbai 400 010.

**APPEARANCES :**

For the Employer : Mr. Umesh Nabar, Advocate

For the Workmen : Mr. J. H. Sawant, Advocate

Mumbai, dated the 21st October, 2013

The Government of India, Ministry of Labour & Employment by its Order No.L-31011/11/2008-IR (B-II), dated 05.02.2009 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

“Whether the action of the management of Mumbai Port Trust for not giving promotional effect & consequential benefits w.e.f. 11/01/2005 to Shri Sandesh Kushte is justified? What relief the union is entitled to?”

2. After receipt of the reference, notices were issued to both the parties. In response to the notice, second party union filed its statement of claim at Ex-7. According to the union Shri Sandesh W. Kushte and 30 other workmen were working in Telecom and Electronic Section of the Chief Mechanical Engineer's Department of the first party. They were transferred from the Chief Mechanical Engineer Department to the Director Planning and Research Deptt of the first party w.e.f 1/5/2002 by way of re organisation of Planning and Research Deptt. They were transferred to the said Deptt with continuity in services, seniority, promotional opportunities and other service conditions. It is a condition of service that Jr. Electronic Assistant (now re-designated as Jr. Engineer (Electronics) Grade-III) are promoted to the post of Sr. Electronic Assistant [now re-designated as Jr Engineer (Electronics) Grade-I] against the vacancies. Against two vacancies in the post of Sr. Electronic Assistant arising out of the promotion of two incumbents i.e. Smt. Akhilandeshwari & Shri N.K. Pathare two employees in the post of Jr. Electronic Assistant i.e. Shri R.D.Jadhav & Shri P.S.Choughule were promoted to the post of Sr. Electronic Assistant w.e.f. 6/9/2003 & 28/6/2004 respectively. The next vacancy in the post of Sr. Electronic Assistant arose on 10/01/2005 on account of resignation/retirement of Shri Pramod M. Pai, Sr. Electronic Assistant. Shri Sandesh W. Kushte was entitled to be promoted to the post of Sr. Electronic Assistant w.e.f. 11/1/2005 with all consequential benefits against the said vacancy as per the statutory terms of his employment. The Departmental Promotion Committee held on 23/6/2004 had already declared the second party workman fit for promotion to the said post. In spite of repeated requests the first party did not give promotion to the second party workman to the post of Sr. Electronic Assistant w.e.f. 11/01/2005 with all consequential benefits. The management ignored the legitimate demand of the union under one pretext or another. According to the union the typographical/clerical error while preparing the note preceding Trustees, Resolution no.81 of 2001 has created the whole problem. Instead of correcting the record and giving consequential benefits to the second party workman, the first party management tried to resolve the

anomaly by granting promotion the second party workman w.e.f. 05/02/2008 by another arrangement instead of promotion w.e.f. 11/01/2005. The second party has accepted the promotion without prejudice to his claim of promotion from the earlier date. The union therefore prays for declaration that the second party was entitled to the promotion to the post of Jr. Engineer (Electronics) Grade-I w.e.f. 11/01/2005 with all consequential benefits against the then existing vacancy as per the Statutory terms of his employment. They also pray for direction to pay the difference since 11/01/2005 and all consequential benefits and cost and compensation.

3. The first party resisted the statement of claim vide its written statement at Ex-8. According to them the claim of the union is false and not tenable in law. They denied all the contents in the statement of claim. According to them contents in the statement of claim are misconceived, malafied and not maintainable. According to them on 11/01/2005 the post was not vacant. Therefore question of promotion to the second party does not arise. In case the promotion is given to the workman, it would amount to injustice to Shri P.S. Choughule performing his duties on his post whose seniority and service conditions would be adversely affected without getting him an opportunity of hearing.

4. According to the first party Shri P.M. Pai who resigned on 10/01/2005 on whose place workman is claiming promotion was on foreign assignment. Mr. Pai at the time of his resignation was performing his duty on foreign assignment and his post was held by Shri P.S. Chougule who is senior to the workman on officiating basis. Resignation of Mr. Pai was accepted on 03/05/2005 and Mr. Chougule was regularly appointed on the said post w.e.f. 23/08/2005. It cannot be said that the promotional post was vacant due to resignation of Mr. Pai. They further contended that Mr. Kushte the concerned workman had not completed the qualifying service of 5 years in the post at the time. The contention of the union that there were three posts of S.E.A. is not correct. On the other hand only two posts of S.E.A. were sanctioned under T.R. no. 81 on 8/5/2001. According to them the union has totally ignored that there is re-organisation of the posts of S.E.A. and the strength is maintained at two only. Under the T.R. the workman concerned had to wait till the vacancy arose. He was promoted on 16/2/2009 on regular basis when the regular vacancy arose in the post of S.E.A. In the circumstances the first party denied that the workman was entitled to the promotion to the post of Jr. Engineer (Electronics) in Grade-I w.e.f. 11/1/2005 with all consequential benefits. Therefore according to the first party the reference being devoid of merit deserves to be rejected. Thus they pray that the reference be rejected with cost.

5. The second party union denied the contents in the written statement vide their rejoinder at Ex-9.

According to them there were three sanctioned posts of Sr. Electronic Assistant now re-designated as Jr. Engineer (Electronics) Grade-I. They denied the contents in the written statement and reiterated their claim in the statement of claim.

6. Following are the issues for my determination. I record my findings thereon for the reasons to follow:

| Sr. No. | Issues  | Findings           |
|---------|---|--------------------|
| 1.      | Whether the action of the management of Mumbai Port Trust in not giving promotional effect and consequential benefit w.e.f. 11/1/2005 to Shri Sandesh Kushte is legal and proper? | No                 |
| 2.      | If not, whether the workman is entitled to the promotional effect and consequential benefits and other reliefs?   | Yes                |
| 3.      | What order?   | As per final order |

### REASONS

#### Issue no. 1 :

7. In this case it is the contention of the first party that there were only two posts of Jr. Engineer (Electronics) Grade-I. Therefore according to them after resignation of Mr. Pai, Mr. Chougule was promoted and before that Mr. R.D. Jadhav was also promoted. According to the first party as there were only two promotional posts available the workman Mr. Khuste could not be promoted. In this respect it was pointed out by the Ld. Adv. for the second party that as per the letter dt. 12/4/2002 (Ex-18) and annexure thereto, it is revealed that there were three posts of Sr. Electronic Assistant. The witness of the first party Mr. P.K. Gopi has also admitted in his cross at Ex-32 that as per the letter dt. 12/4/2002 there were 3 sanctioned posts of Sr. Electronic Assistants in the Electronic Section in the Chief Mechanical Engineering Department. He has also admitted in his cross that the staff of Electronic Section of Chief Electronic Engineers' Department was transferred to the Department of Planning and Research. In the light of this admission of management witness and the letter dt. 12/4/2002 it is clear that there were three posts of Jr. Engineer (Electronic). Mr. R.D. Jadhav and Chougule were already promoted to the post of Sr. Electronic Assistant [now re-designated as Junior Engineer (Electronics) Grade-I. It supports the version of the second party that there was some typographical/clerical mistake while putting the note before the committee and instead of three posts of Jr. Engineer (Electronics) Grade-I it is mentioned only two posts and therefore the workman was not given promotion till 2008. The first party has wrongly contended in their written statement that there were only two promotional posts of Jr. Engineer (Electronic) Grade-I.

Infact from the evidence on record it is revealed that there were three posts of Jr. Engineer (Electronic) Grade-I as seen from the above evidence. Therefore though Mr. Ranjith Jadhav and P.S.Chougule are senior to the workman, immediately after their promotion as the third post was vacant, the workman was entitled to get the said promotion after Mr. Chougule. As per the version of the first party Mr. Chougule was appointed on the promotional post on regular basis from 23/8/2005. Thus I hold that the workman is entitled to the promotion from 24/8/2005. Accordingly I hold that not giving promotion to the workman since 24/8/2005 is unjust and improper. Accordingly I decide this issue no.1 in the negative and hold that the workman is entitled to get the difference in wages since 24/08/2005 and consequential benefits thereafter. Thus I partly allow the reference and proceed to pass the following order

#### ORDER

- (i) The reference is partly allowed with no order as to cost.
- (ii) The action of management in not giving timely promotion to the workman is hereby declared as unjust and improper.
- (iii) The management is directed to treat the promotion of the workman w.e.f. 24/08/2005 and to pay him the difference in pay, allowances and all other consequential benefits as if he was promoted from the above referred date.

Date: 21.10.2013

K. B. KATAKE, Presiding Officer

नई दिल्ली, 29 जनवरी, 2014

**का.आ. 511.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब एण्ड सिंध बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 34/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-1-2014 को प्राप्त हुआ था।

[सं. एल-12011/71/2012-आई आर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 29th January, 2014

**S.O. 511.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 34/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure in the Industrial Dispute between the Management of Punjab and Sind Bank and their workmen, received by the Central Government on 29-1-2014.

[No. L-12011/71/2012-IR (B-II)]

RAVI KUMAR, Section Officer

#### ANNEXURE

#### CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

**PRESENT :** Dr. MANJU NIGAM, Presiding Officer

**I.D. No. 34/2013**

Ref. No. L-12011/71/2012-IR( B-II) dated : 08.03.2013

#### BETWEEN:

Organizing Secretary  
UP Bank Employees Union  
Awadh Trade Centre  
Balmiki Marg, Lalbagh  
Lucknow.

(Espousing cause of Shri J.S. Bhatia & 08 others)

#### AND

1. Chief Manager  
Punjab & Sind Bank  
21, Rajinder Place,  
New Delhi
2. Sr. Manager  
Punjab & Sind Bank  
Hazratganj Branch,  
Lucknow

#### AWARD

1. By order No. L-12011/71/2012-IR( B-II) dated: 08.03.2013 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Organizing Secretary, UP Bank Employees Union, Awadh Trade Centre Balmiki Marg, Lalbagh, Lucknow and Chief Manager, Punjab & Sind Bank, 21, Rajinder Place, New Delhi & Sr. Manager, Punjab & Sind Bank, Hazratganj, Branch, Lucknow for adjudication.

2. The reference under adjudication is:

“WHETHER THE ACTION OF THE MANAGEMENT OF PUNJAB & SIND BANK IN TRANSFERRING THE WORKMAN SHRI J.S. BHATIA AND 08 OTHERS BY TRANSFER ORDER, IS LEGHAL AND JUSTIFIED? WHAT RELIEF THE WORKMEN CONCERNS ARE ENTITLED?”

3. The order of reference was endorsed to the Organizing Secretary, UP Bank Employees Union, Awadh Trade Centre, Balmiki Marg, Lalbagh, Lucknow with direction to the party raising the dispute to file the statement of claim along with relevant documents, list of reliance and witnesses with the Tribunal within fifteen days of the receipt of the order of reference and also



forward a copy of such a statement to each one of the opposite parties involved in this dispute under rule 10 (B) of the Industrial Disputes (Central), Rules, 1957.

4. The order of reference was registered in this Tribunal on 22.04.2013 and the office was directed to issue registered notice to the workman's union for filing the statement of claim with list of reliance & list of witnesses on 07.06.2013; but no statement of claim together with documents etc. was filed either on 07.06.2013 or on the next date fixed i.e. on 29.07.2013. The workman's union kept itself absent on the following dates i.e. on 26.09.2013, 10.10.2013 and even today. The union did not move any application or adjournment seeking time to file the statement of claim. More than half a year's time has passed and the woman's union has neither put up its appearance nor has filed its statement of claim, therefore, the case was reserved for award, keeping in view the reluctance of the workman's union to contest the case.

6. In the above circumstances, it appears that the workman's union does not want to pursue its claim on the basis of which it has raised the present industrial dispute; therefore, the present reference order is decided as if there is no grievance left with the workmen's union. Resultantly no relief is required to be given to the workmen concerned. The reference under adjudication is answered accordingly.

8. Award as above.

LUCKNOW

22<sup>nd</sup> November, 2013.

Dr. MANJU NIGAM, Presiding Officer

नई दिल्ली, 29 जनवरी, 2014

**का.आ. 512.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, मुंबई के पंचाट (संदर्भ संख्या 35/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-1-2014 को प्राप्त हुआ था।

[सं. एल-12011/22/2008-आई आर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 29th January, 2014

**S.O. 512.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 35/2008) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Mumbai as shown in the Annexure in the Industrial Dispute between the Management of Bank of India and their workmen, received by the Central Government on 29-1-2014.

[No. L-12011/22/2008-IR (B-II)]

RAVI KUMAR, Section Officer

## ANNEXURE

### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

**PRESENT:** K. B. KATAKE, B.A., L.L.M.,  
Presiding Officer

**REFERENCE NO. CGIT-2/35 of 2008**

Employers in relation to the management of  
Bank of India

The Dy. General Manager  
Bank of India  
Mumbai South Zone, IR Deptt.  
70-80, Bank of India Building, 2<sup>nd</sup> floor  
M.G. Road, Fort  
Mumbai 400 001.

**AND**

**THEIR WORKMEN**

The General Secretary  
Bank of India Staff Union  
Bank of India Building  
70-80, M.G. Road, Fort  
Mumbai 400 023.

### APPEARANCES:

For the Employer : Mr. Lancy D'Souza,  
Representative

For the Workman : Mr. J. H. Sawant, Advocate

Mumbai, dated the 20th September 2013

### AWARD

The Government of India, Ministry of Labour & Employment by its Order No.L-12011/22/2008-IR (B-II), dated 05.06.2008 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

“Whether the action of the management of Bank of India, Mumbai South Zone, Mumbai by awarding the compulsory retirement to Shri Prakash V. Patil from the Bank services is justified? If not, what relief the workman, Shri Prakash V. Patil is entitled to?”

2. After service of the notices both the parties appeared through their defence representatives. The Second party workman has filed his Statement of claim at Ex-7. According to the workman he was serving with the first party as sub staff i.e. A/c Plan Operator- cum- Electrician with effect from 1/07/1980. He served with first party till 31/05/2005. The first party charge sheeted him on 15/01/2005 alleging that 16 cheques issued by the

workman drawn on his S.B. account No. 66522 maintained at Kandivali branch. The cheques were presented on 29 occasions and same were dishonoured for insufficient balance in his S.B. A/c. The enquiry was held against the workman. He admitted before the enquiry officer that, he had issued cheques to his friends and relatives and they were dishonoured as he could not manage to deposit the amount in his account. The enquiry officer therefore held him guilty and submitted the enquiry report to the Disciplinary authority. The disciplinary authority after hearing the workman held him guilty and imposed punishment of compulsory retirement. The appeal against the order was dismissed therefore, the workman has raised industrial dispute. As conciliation failed on the report of ALC (C) the Labour Ministry sent the reference to this Tribunal.

3. According to the workman his mother was suffering from cancer and for her treatment he had borrowed money from his friends and relatives and issued them cheques. Due to financial strain he could not manage to deposit the amount in his account and those cheques were bounced. The cheques were bounced, none of his friends or relatives has ever made any complaint to the Bank, none of them have filed any case against him. Therefore the Bank has no reason to initiate the enquiry against him. He further contended that the enquiry officer has not recorded evidence of any witnesses. He prepared his report merely on the basis of admission of the workman. Enquiry was completed on the same day. The enquiry was not fair and proper. The workman has not committed any misconduct as has been alleged. The findings of the enquiry officer are thus perverse. Therefore he prays that the order of compulsory retirement be set aside and he be directed to be reinstated in the service with full back wages and consequential benefits.

4. The first party resisted the claim vide its written statement at Ex-8. According to them the workman had issued 16 cheques without sufficient balance in his S. B. A/c. Those cheques were bounced. This act of the workman not only amount to lack of honesty, financial integrity, but also a criminal offence U/S 138 of Negotiable instrument Act. Therefore workman was charged for misconduct of doing an act prejudicial to the interest of Bank under clause 5 (j) of memorandum of settlement dated 10/04/2002. Shri M. K. Mulgaonkar was appointed as enquiry officer and Shri V. V. Kadam was appointed as Presenting Officer. Intimation of the same was given to the workman with list of documents and witnesses. The workman obtained number of dates. Finally he appeared before the enquiry officer on 14/02/2005. He voluntarily and unconditionally accepted the charges. The enquiry officer found the workman guilty. Accordingly he sent the report to the disciplinary authority. The disciplinary authority served him with show cause notice. After giving him hearing, the disciplinary authority imposed penalty of compulsory

retirement. The workman preferred appeal and the same came to be dismissed by Appellate Authority. The workman was given fair and sufficient opportunity to defend himself. He has admitted the facts that he had issued the 16 cheques to various persons and the same were dishonoured. The enquiry is thus fair and proper. The findings of the enquiry officer are based on evidence and admission of guilt by the workman. Therefore, the findings of the enquiry officer are not perverse. The first party therefore prays that reference be rejected with cost.

5. Following are the preliminary issues for my determination, I record my findings thereon for the reasons to follow.

| Sr. No. | Issues   | Findings            |
|---------|--|---------------------|
| 1.      | Is enquiry fair and proper?                    | Yes                 |
| 2.      | Are findings of the enquiry Officer perverse ? | Yes                 |
| 3.      | What order?                                    | As per final order. |

### REASONS

#### Issue no. 1 :

6. In respect of enquiry it is contended on behalf of the workman that, the enquiry officer neither recorded statement of witness nor gave opportunity to the second party to cross examine any of the witnesses. In this respect the fact is not disputed that enquiry officer did not examine any witness and he prepared the enquiry report on the basis of admissions of the workman. Therefore, the learned Adv. for the first party submitted that the enquiry report can be based on the basis of admission of the workman. In support of his argument the learned adv resorted to the Bombay High Court ruling in Hindustan Spinning Mill Mumbai V/s Hindustan Crown Mills Siddhivinayak Kamgar Karamachari Sangharsha Sanghatana and Others 2008 1 LLJ 243 wherein. The Hon'ble Court on the point observed that;

“The admission is a best evidence against the party making it though, not conclusive, shifts the onus to the maker that on principle that what the party himself admits to be true may be reasonably presumed to be true so that until onus is discharged the facts admitted must be taken to be true”

7. The learned Adv. also resorted to the Apex court ruling in Additional District Magistrate (city) Agra V/s Prabhakar Chaturvedi and Another 1996 (72) FLR 420 SC wherein the Hon'ble Court on the point observed that;

“In fact on account of declared admission contained in writing given by respondent No.1 on 14/12/1984 the charge against him stood proved on admission

and then only question that remained to be considered was about the nature of punishment to be imposed on him.”

8. In this respect it is pertinent to note that the workman has never denied the fact that, he had issued the cheques and they were dishonoured for want of sufficient funds in his account. In these circumstances the enquiry officer has prepared his report on the basis of facts admitted by the workman. Till this date the workman has not denied this fact. Furthermore I would like to point out that as no witness was examined, hence question of making any witness available for cross examination does not arise. Therefore the contentions on behalf of the workman, does not stand to reasons that, there was violation of principle of natural justice.

9. In this respect the fact is not disputed that the charge sheet was served on the workman. He appeared before the enquiry officer. The enquiry officer explained him the charges. The workman has admitted the fact that, the cheques issued by him to various persons were dishonoured. On the basis of his admission the enquiry officer has prepared his report. In the light of the above referred rulings it is clear that the report of the Enquiry Officer can be based on the admission of the workman it is not always necessary to examine the witnesses, therefore, I come to the conclusion that the enquiry is fair and proper. Accordingly I decide this issue no.1 in the affirmative.

**Issue no. 2 :**

10. In this case the Enquiry Officer held the workman guilty for “doing any act prejudicial to the interest of the Bank”. According to the workman the said finding is perverse. The facts of the case herein are very typical. The workman herein has not disputed that he had issued number of cheques drawn on his S.B. A/c No. 66522 and those cheques were dishonoured as has been alleged. According to him, his mother was suffering from cancer and for her treatment he had obtained money from his friends and relatives. He had issued those cheques towards repayment of the amounts he has borrowed. He has also admitted that, he could not manage to deposit sufficient amounts in his account, therefore those cheques were dishonoured. In the light of these admissions the Enquiry Officer has concluded the enquiry and held him guilty. In this respect the Ld. Adv. of the first party relied on the above referred ruling of Hon’ble Supreme Court in Additional District Magistrate (supra) where in the Hon’ble Court held that, on account of admission the charge is held to be proved and only question that remains to be considered was about the nature of punishment to be imposed on him. The Ld. Adv. therefore submitted that in the light of the above ruling the charge is proved on admission. In this respect I would like to point out that, in the above referred case charge against the workman therein was of misappropriation of amount of more than Rs. 21,000.

In the circumstances admission therein was held admission of guilt itself. However in the case at hand the fact is altogether different than the facts in the above referred case. In the case at hand, though the workman had admitted the facts that, the cheques issued by him were dishonoured for want of sufficient funds in his account, he has not admitted the allegation that, he has committed any act prejudicial to the interest of the Bank, as has been alleged in the charge sheet. On the other hand according to him in compelling circumstances he was required to borrow money from his relatives and friends for the treatment of his mother who was suffering from cancer. According to him by way of security he had issued the cheques. Due to the financial difficulties he could not make the repayment in time.

11. He further contended that, he has paid the amounts of some of his creditors and he would be paying to the remaining. In this respect it is pertinent to note that, none of the persons whose cheques were dishonoured either made any complaint to the Bank nor filed any case U/S 138 of Negotiable Instrument Act. It is contended on behalf the first party that, the workman has committed an offence u/s 138 of N. I. Act. However mere dishonour of cheque, ipso facto does not amount to an offence. The offence u/s 138 of N. I. Act is of technical in nature. Before amendment to the N. I. Act the dishonour of the cheque was not an offence. Even after enactment of Sec.138 mere dishonour of the cheque is not an offence. To make it punishable it is at the option of the aggrieved party, as to whether to prosecute or to give more time or he may also forego the action. In case he wants to take action he has to give notice of a specific period to make the payment. In case of failure the complaint has to be filed within the time prescribed therefor. In short mere dishonour of a cheque is not an offence unless the aggrieved party decide to file complaint and follow the special procedure prescribed therefor. In the case at hand neither anyone had opted to file complaint against the workman nor workman is either charge-sheeted or convicted under Section 138 of N.I. Act. In the circumstances the averment of the first party does not stand to reasons that, as the cheques were dishonoured, and the workman has admitted the said fact, thus he has committed offence u/s 138 of N. I. Act. Infact in the case at hand Section 138 of N.I. Act is not at all invoked. Therefore question of committing offence by the workman under Section 138 of N.I. Act does not arise.

12. In this respect another point raised on behalf of the first party is that as the workman is an employee of the bank, mere dishonour of cheques issued by him caused harm to the reputation of the Bank and ultimately it can affect the business of the bank. In this respect at the outset I would like to point out that, neither the workman herein is holding any key post in the bank nor anybody has made any complaint to the Bank about the dishonour of the cheque. The workman is a sub-staff-cum-electrician

and as there was no complaint, question of causing harm to the reputation of the bank does not arise. At the same time it was pointed out that the workman has admitted the charges and therefore the enquiry officer has prepared his report on the basis of admission. In this respect I would like to point out that the workman has not admitted the charge, he has only admitted the fact that, he had issued the cheques and they were dishonoured. He has also explained the circumstances as to why he had issued those cheques and in what circumstances they were dishonoured. He has not admitted the charge that, he committed an act prejudicial to the interest of the bank. Therefore the version of the first party is not acceptable that, the findings of the enquiry officer are based on the admission of the workman.

13. On the point of the findings, the Ld. adv. for the first party submitted that the Tribunal is not sitting as Appellate Court and cannot set aside the findings of the enquiry officer and replace its own findings. In this respect I would like to point out that this Tribunal can very well re-appreciate the evidence recorded in the domestic inquiry and can reach to the just and fair conclusion. Law to that effect is laid down by Hon'ble Apex Court in *Firestone Tyre and Rubber Co. of India Pvt. Ltd. V/s. Management and ors.* 1973 (1) SCC 813 wherein the Hon'ble Court has observed that;

“The Labour Court has now been clothed with the power of re-appreciating evidence in the domestic inquiry and satisfy itself whether the said evidence relied on by the employer establishes the misconduct alleged against the workman.”

14. In the light of these observations of the Apex Court I would like to re-appreciate the evidence in the domestic inquiry. In this respect I would like to point out that the reason to borrow huge amount by the workman is not only genuine but it was his pious obligation to treat his mother, who was suffering from the dreaded disease like cancer. In the circumstances it can be said that a poor sub staff has set an example before the members of the staff and the society as well that, he did his best and spent maximum amount for the treatment of his cancer ridden mother. The Bank and employees thereof should be proud of such an employee. For the same reason, the creditors of the workman, seems to have not made any complaint either to the bank or in the court of law as well. This aspect is not at all taken into account by the enquiry officer.

15. No doubt the cheques issued by the workman were bounced. The creditors are the real aggrieved parties for the same. However no one of them has made any grievance therefor. To be poor cannot be termed as a misconduct so also the act of borrowing money for genuine purpose and failure to repay the debt as promised also cannot be termed as misconduct. Dishonour of cheque is nothing but failure to repay the debt as promised for. The

dishonour of cheque is brought in the ambit of offence, for commercial discipline and to give more sanctity to the negotiable instruments. However it is, at the option of the holder of the cheque. Otherwise neither it can be said an act with guilty intention nor can be termed as offence relating to moral turpitude as such. In this backdrop it is clear that the act of not making arrangement to deposit amount or dishonour of cheque does not amount to misconduct causing dis-reputation or loss to the bank. In these days we see number of incidents in the society wherein old parents are being neglected and they are required to take recourse of law. The workman herein had not borrowed the amount for his personal expenses or for any other fancy purposes. On the other hand the workman has set up an example how to obey the pious obligation towards old and ill taken parent. For that purpose he was required to borrow huge amounts which he could not repay in time. Therefore the cheques issued by him were bounced. Neither it would cause dis-reputation to the Bank nor would affect its business, as reason behind borrowing the amount was noble and to meet out the pious obligation of a son towards his mother. The first party Bank and the employees thereof should be proud of such an employee who has spent exorbitant amount for the treatment of his cancer ridden mother. The inquiry officer has lost sight of this aspect in the admitted fact of dishonour of cheque. In the circumstances I hold that, neither dishonour of cheques herein amount to an offence nor it can be said an act prejudicial to the interest of the Bank. His admission was limited only to dishonour of cheque and not to the charge of doing an act prejudicial to the interest of the Bank. In this backdrop I hold that, the findings of the inquiry officer are perverse as he held the workman guilty of misconduct of committing an act prejudicial to the interest of the Bank.

16. As the findings of the enquiry officer are found perverse, infact the workman was not guilty for the misconduct charged against him. Thus I hold that the punishment of compulsory retirement imposed on the workman needs to be set aside. Consequently I hold that the workman deserves to be reinstated in the service.

17. In respect of back-wages the Ld. adv. for the first party submitted that ‘no work no wages’ is now well settled position of law. He further submitted that the workman must have earned atleast to meet the two ends of he himself and his family. Therefore he submitted that no back wages should be awarded to the workman. In this respect he further submitted that awarding of back wages would be unnecessary burden on the first party and ultimately on the state exchequer. As against this the Id. adv. for the second party submitted that the workman is a poor person working as a sub staff -cum- electrician. He was made to retire compulsorily only because he was poor



and could not arrange for the money. According to him the act of dishonour of cheque cannot be termed as misconduct or offence. The workman was compulsorily retired without any fault on his part. He sustained huge monetary loss. Therefore the Ld. adv. submitted that the workman is entitled to full back wages.

18. Awarding full back-wages without any work would no doubt amount to putting unnecessary burden on the state exchequer. At the same time as findings of enquiry officer are found to be perverse and punishment imposed is found to be illegal. The workman is a poor sub- staff who has spent huge amount for the treatment of his mother. His act in question does not amount to misconduct as has been alleged. In this backdrop not awarding any back wages would amount to injustice to the workman. In the circumstances to meet the end of justice, I think it proper to award 50% back wages to the workman. Accordingly, I partly allow the reference and proceed to pass the following order :

#### ORDER

- (i) The Reference is partly allowed with no order as to cost.
- (ii) The punishment of compulsory retirement of the workman is hereby set aside. The first party is directed to reinstate the workman with 50% back wages and all consequential benefits and continuity of service.

Date: 20.09.2013

K. B. KATAKE, Presiding Officer

नई दिल्ली, 29 जनवरी, 2014

**का.आ. 513.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मुंबई पत्तन न्यास के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, मुंबई के पंचाट (संदर्भ संख्या 48/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-1-2014 को प्राप्त हुआ था।

[सं. एल-31011/14/2007-आई आर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 29th January, 2014

**S.O. 513.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 48/2007) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Mumbai as shown in the Annexure in the Industrial Dispute between the Management of Mumbai Port Trust and their workmen, received by the Central Government on 29-1-2014.

[No.L-31011/14/2007-IR (B-II)]

RAVIKUMAR, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

**PRESENT :** K. B. KATAKE, Presiding Officer

**Reference No. CGIT-2/48 of 2009**

#### Employers in relation to the management of Mumbai Port Trust

The Chairman,  
Mumbai Port Trust  
Port House  
Ballard Estate  
Mumbai-400 038.

#### AND

Their Workman

Shri L.P. Churnarkar  
C/o. Balkrishna Zade Patil  
Shivaji Ward, Mul Road  
Near Bright English Convent  
Tq. Gondpipari  
Gondpipari  
Distt. Chandrapur-(MS)

#### APPEARANCES :

For the Employer : Mr. Umesh Nabar, Advocate

For the Workmen : No appearance

**Mumbai**, dated the 26th September, 2013

#### AWARD PART-I

The Government of India, Ministry of Labour and Employment by its Order No.L-31011/14/2007-IR (B-II), dated 04.10.2007 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

“Whether the action of the management of Mumbai Port Trust in terminating the services of Shri L.P.Chunarkar w.e.f. 11/01/1999 is justified? If not, what relief, Shri L.P.Chunarkar is entitled to?”

2. After receipt of the reference, notices were issued to both the parties. In response to the notice, second party workman filed his statement of claim at Ex-13. According to the second party he was working with first party from 25/1/1983 till 11/1/1999. He was promoted as Junior Assistant w.e.f. 1/8/1997 and was posted in Labour Office of the Docks Department of the first party. The past record of the workman was spotless and clean. Due to ill health and due to personal problems, workman was unable to attend his duties in the month of October/ November 1998. First party issued a show cause notice

dt.3/12/98 which was replied by workman vide his letter dt. 11/12/98. First party initiated inquiry against the workman and appointed inquiry officer who was a salaried employee of the first party. Workman remained present on the first day of inquiry however could not remain present on the 3<sup>rd</sup> or 4<sup>th</sup> week of December 1998. On 11/1/99 he was given a copy of confidential memo stating that his explanation was found unsatisfactory and also wrongly stated that past service record of the workman shows warnings for absence were issued. No opportunity of hearing was given to the workman or to defend himself through his defence representative. Workman was not given opportunity to cross examine the management witnesses. He was not supplied with copies of documents relied upon by the management. On 11/1/99 the workman was surprised when he was issued order of removal from services without issuing final show cause notice as per settled principals of law. No charge sheet was given to the workman. For all these reasons workman states that the inquiry was not fair and proper and was illegal. Workman approached ALC (C). On the report of ALC (C), Ministry of Labour & Employment referred the dispute to this Tribunal. Therefore workman prays to set aside the order of removal dt. 11/1/1999 and direct the first party to reinstate the workman in service with full back wages and continuity of service.

3. The first party management resisted the claim statement vide their written statement vide Ex-15. According to them second party workman was appointed as B scale Clerk in the Traffic Department of first party on 25/1/1983. The workman was in the habit of frequently remaining absent unauthorisedly. According to them though second party was warned by memo dt. 7/2/1984 for his unauthorised absence, he did not show any improvement in his attendance. He remained unauthorisedly absent on 24 occasions during the period from 25/1/1983 to 16/1/1985. Workman was imposed minor penalty of withholding next increment without prejudice to his future increments for a period of 2 years as per memo dt. 20/03/1989. He again remained absent unauthorisedly for 297 days on 79 occasions during the period 1/1/1991 to 19/5/1994 for which again minor penalty of withholding increment was imposed on the workman vide memo dt. 5/9/1995. Despite the aforesaid warnings and minor penalties, workman remained absent unauthorisedly for 555 days on 11 occasions during the period from 20/5/1994 to 17/6/1998. Chargesheet was served on the workman on 18/7/1998 for his misconduct of violating Regulations 3 (1A) (ii) and (v) of the MbPT Employees' (Conduct) Regulation 1976. Workman did not reply the chargesheet and first party was constrained to initiate a departmental inquiry against the workman. Mr. S.S. Tijore, Assistant Manager was appointed as Inquiry Officer and Mr. L.B. Kumbhar, Assistant Manager as Presenting Officer. Workman did not remain present in the inquiry proceeding inspite of receiving intimations

thereof. Therefore IO concluded the proceedings ex-parte and submitted his report dt. 10/11/1998 holding the workman guilty of the charges leveled against him. Disciplinary Authority after going through the findings issued show cause notice dt. 3/12/98. Workman replied the show cause notice vide letter dt.14/12/1998 which was not found satisfactory by the Disciplinary Authority and therefore granted personal hearing to the workman. Not being satisfied with his oral and written submission, disciplinary authority by order dt. 11/1/1999 imposed penalty of removal from services with immediate effect on the workman. First party denied all the contentions in the statement of claim of the workman and prayed to reject the reference with costs.

4. Following are the issues framed for my determination. I record my findings thereon for the reasons to follow:

| Sr. No. | Issues   | Findings |
|---------|--|----------|
| 1.      | Whether the inquiry held against the workman Shri L.P.Churnarkar was legal and proper? | Yes      |
| 2.      | Whether the findings of the IO are perverse?   | No       |

#### REASONS

##### Issue no. 1 :

5. In the case at hand the workman has challenged the inquiry stating that he was not given an opportunity to defend himself. It is also contended that in the inquiry proceeding he was not given an opportunity to cross examine the witnesses examined by the management. It is also contended that the inquiry was conducted ex -parte and there was gross violation of principles of natural justice. In this respect it is submitted on behalf of the management that the charge sheet was served on the workman. Due notice was given to him in respect of the dates of inquiry. The workman was present on the first date of hearing. The workman has also admitted the said fact in his statement of claim that on the first day of hearing before the Inquiry Officer, he was present. According to the workman on the next date he could not attend the hearing before the IO for his personal reasons. He has not explained why he could not attend the inquiry proceeding before the IO. From the statement of claim itself it is clear that the workman remained absent inspite of notice of further date of inquiry. Therefore the IO proceeded with the inquiry in the absence of the workman. As workman willfully remained absent inspite of notice, therefore, he cannot claim for any advantage in respect of his own mistake. Furthermore I would like to point out that the burden was on the workman to prove what was the compelling reason which prevented him from appearing

before the IO. However the workman has not even led any evidence in this reference. He has not filed his affidavit in support of the contents in the statement of claim. In short, the workman failed to discharge the initial burden on him.

6. On the other hand the first party management has proved the contents in their written statement by filing affidavit of the concerned officer at Ex-35. The first party has also proved all the documents on record at Ex-24 to 34. From the documents and evidence on record it is clear that sufficient opportunity was given to the workman. In spite of that he remained absent. Therefore inquiry Officer had no other alternative but to proceed with the inquiry exparte. In the circumstances the plea of the workman does not stand to reasons that there was violation of principles of natural justice. In the case at hand the fact is not disputed that the inquiry officer has explained the charge to the workman on the first date of hearing. He was given the next date of hearing. The workman remained absent. Therefore IO examined the witnesses and proceeded with the inquiry exparte. He submitted his report to the disciplinary authority. The Disciplinary authority sent the copy of inquiry report to the workman with show cause notice. Workman filed his reply and after hearing him the disciplinary authority has passed the order. As workman willfully remained absent, therefore he cannot raise the plea of violation of principles of natural justice. In the circumstances I hold that the inquiry was fair and proper. Accordingly I answer this issue no.1 in the affirmative.

#### Issue no. 2 :

7. In respect of the findings of the Inquiry officer, it is contended on behalf of the workman that the findings of the IO are perverse. According to him as he did not get opportunity to cross examine the witnesses and to lead his evidence, the findings of the IO are one sided and are thus perverse. In this respect I would like to point out that, the inquiry was found to be fair and proper. The workman in spite of knowledge of the date of inquiry remained absent. Therefore no fault can be found in the inquiry proceeding. The findings of the IO are based on the evidence on record. In the circumstances no fault can be found in the findings of the inquiry officer. Furthermore the workman has not led any evidence in support of his pleadings in the statement of claim. On the other hand the contents in the written statement are proved by the first party by examining their witness at Ex.35. In this backdrop conclusion can be arrived at that findings of the IO are not perverse. Accordingly I decide this issue no. 2 in the negative. Thus the order:

#### ORDER

- (i) The inquiry is held fair and proper.
- (ii) Findings of the Inquiry Officer are not perverse.

- (iii) The parties are directed to argue/lead evidence on the point of quantum of punishment.

Date: 26.09.2013

K. B. KATAKE, Presiding Officer

नई दिल्ली, 29 जनवरी, 2014

**का.आ. 514.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, मुंबई के पंचाट (संदर्भ संख्या 58/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-1-2014 को प्राप्त हुआ था।

[सं. एल-12012/46/2011-आई आर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 29th January, 2014

**S.O. 514.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 58/2011) of the Central Government Industrial Tribunal-cum-Labour Court-2, Mumbai as shown in the Annexure in the Industrial Dispute between the Management of Bank of India and their workmen, received by the Central Government on 29-1-2014.

[No. L-12012/46/2011-IR (B-II)]

RAVI KUMAR, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

**PRESENT:** K.B. KATAKE, Presiding Officer

**REFERENCE NO. CGIT-2/58 of 2011**

**Employers in relation to the management of  
Bank of India**

The Zonal Manager  
Bank of India  
1162/6, Shivajinagar  
University Road,  
Pune-411 005

#### AND

#### THEIR WORKMEN

Shri Ranjit D. Bote S/o Shri D.G. Bote  
Ex-Arm Guard  
Manjula Housing Society  
Jagtap Mala, Behind Muktidam  
Nasik Road  
Mumbai.

**APPEARANCES:**

For the Employer : Mr. Lancy D'Souza,  
Representative

For the Workman : No appearance

Mumbai, dated the 9th October, 2013

**AWARD**

The Government of India, Ministry of Labour & Employment by its Order No.L-12012/46/2011-IR (B-II), dated 04.11.2011 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

“Whether the management of Bank of India right in rejecting the claim of the legal heir of the deceased workman (Late Sh. D.G. Bote, Ex-Arm Guard) for compassionate employment/lump sum Ex-gratia payment as per the scheme in force. What relief and other benefits is the dependent family member of the deceased workman entitled to?”

2. After receipt of the reference, notices were issued to both the parties. Workman was served with notices vide Ex-4, Ex-6, Ex-8 and Ex-10. On 15/05/2012 concerned workman remained present but requested adjournment for filing statement of claim. Till date, second party workman neither appeared in the proceeding nor filed his statement of claim. Since nobody appeared on behalf of the second party workman and filed statement of claim, it seems he is not interested in pursuing the matter further. Without statement of claim award cannot be passed on merits. Therefore I think it proper to dismiss the reference for want of prosecution. Thus I pass the following order:

**ORDER**

Reference stands dismissed for want of prosecution.  
No order as to cost.

Date: 09.10.2013

K. B. KATAKE, Presiding Officer

नई दिल्ली, 29 जनवरी, 2014

**का.आ. 515.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, दिल्ली के पंचाट (संदर्भ संख्या 92/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-1-2014 को प्राप्त हुआ था।

[ सं. एल-39025/1/2010-आई आर (बी-II) ]  
रवि कुमार, अनुभाग अधिकारी

New Delhi, the 29th January, 2014

**S.O. 515.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 92/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Delhi as shown in the Annexure in the Industrial Dispute between the Management of Bank of India and their workmen, received by the Central Government on 29-1-2014.

[No. L-39025/1/2010-IR (B-II)]

RAVI KUMAR, Section Officer

**ANNEXURE**

**BEFORE DR.R.K.YADAV, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL  
NO.1, KARKARDOOMA COURTS COMPLEX, DELHI**

**I.D. No. 92/2012**

Shri S.C.Das,  
R/o 28, Rampuri,  
Ground Floor,  
Kalkaji,  
New Delhi -110019

...Workman

**Versus**

The Zonal Manager,  
Bank of India,  
Zonal Office, New Delhi Zone,  
Jeevan Bharti Building, Level-5,  
Tower-1, New Delhi-110058

...Management

**AWARD**

A computer terminal operator (in short the CTO), working with Bank of India (in short the bank) purchased a house at 28, Rampuri, Ground Floor, Kalkaji, New Delhi. He came to reside there alongwith his family. His elder brother happened to be an IAS Officer, posted with Central Vigilance Commission, Government of India, New Delhi. With a view to keep his upmanship with the local residents and avail favour for a few facilities, the CTO impersonated himself as an IAS officer, posted as Director, Central Vigilance Commission, Government of India, New Delhi. He boasted of his position amongst the local residents. He wrote letters to the officers of the Municipal Corporation of Delhi, impersonating himself as a civil servant. He collected money from local residents for development of a park. When his status came to light, one of the residents made a complaint to the bank. A fact finding enquiry was conducted. Ultimately, charge sheet was served on the CTO. A domestic enquiry was constituted. The Enquiry Officer recorded findings against the CTO. The bank awarded him punishment of 'compulsory retirement from service'. He raised a demand for reinstatement in service, which demand was not conceded to by the bank. He approached the Conciliation



Officer for redressal of his grievances. The Conciliation Officer entered into conciliation proceedings. Since the bank contested his claim, conciliation proceedings ended into a failure.

2. On expiry of 45 days from the date of making an application before the Conciliation Officer, the CTO, namely, Shri S.C. Das raised a dispute before this Tribunal under provisions of sub-section (2) of section 2A of the Industrial Disputes Act, 1947 (in short the Act). He unfolded that his services were terminated by the bank on 25.02.2011 and an application was moved by him before the Conciliation Officer on 16.04.2012. He asserted that a period of 45 days stood expired from the date of making an application before the Conciliation Officer. Since sub-section (2) of section 2A of the Act empowers a claimant to file a direct dispute before this Tribunal without being referred for adjudication by the appropriate Government, under sub-section (1) of section 10 of the Act, in case of discharge, dismissal, retrenchment or otherwise termination of his services and the dispute raised by the claimant was within the time limit prescribed by sub-section (3) of section 2A of the Act, it was registered as an industrial dispute.

3. During pendency of the dispute, referred above, the Conciliation Officer submitted his failure report to the appropriate Government. An opinion was formed by the appropriate Government that an industrial dispute exists and it referred the dispute to this Tribunal for adjudication, vide order No.L-12012/81/2012-ID(B-II), New Delhi dated 08.03.2013, with following terms:

“Whether action of the management of Bank of India in terminating/ compulsorily retiring Shri S.C.Dass is legal and justified? What relief the workman is entitled to?”

4. Dispute raised by the claimant under sub-section (2) of section 2A of the Act encompass the very controversy, which was referred for adjudication to this Tribunal by the appropriate Government under sub-section (1) of section 10 of the Act. Two disputes arose out of the same facts between the same parties. Therefore, the above disputes were clubbed together and the dispute registered as ID No.92/2012 was treated as main case for all purposes.

5. Claim statement was filed by Shri S.C. Das pleading that he was employed by the bank in October 1983 and working as CTO at its Greater Kailash Part II branch on 25.02.2011, the date when his services were illegally dispensed with. He presents that memorandum dated 01.12.2009 was served on him wherein it was alleged that he introduced himself to his neighbours as an IAS officer working as Director with Central Vigilance Commission, Government of India, New Delhi and thus impersonated himself as an IAS Officer. Not only did he introduce himself as an IAS Officer to his neighbours but also wrote letters to the Deputy Commissioner, Municipal Corporation of Delhi on 11.11.2003, 04.03.2004 and

10.03.2004 impersonating himself as an Officer, working as Director, Central Vigilance Commission and residing at 28, Rampuri, Ground Floor, Kalkaji, New Delhi. He also got words ‘Govt. of India’ painted on number plate of his car, bearing registration No.DL 3C AG 9712. In his version dated 01.10.2009, he had falsely stated that the said car was registered in the name of his real brother Shri S.K. Das. He gave false submissions with a view to mislead the investigation.

6. Claimant projects that memo dated 01.12.2009 was replied by him vide his letter dated 22.12.2009. After considering his reply, the bank served charge sheet dated 29.05.2010, after about six months. In the said charge sheet additional charge, not mentioned in the memorandum dated 01.12.2009, was added. It was alleged therein that the claimant had not deposited Rs.1,000.00 in the account of Ms.Poornima Sikdar on 28.02.2009 and in fact deposited that amount on 02.03.2009. He claimed that no document was supplied to him either with memorandum dated 01.12.2009 or with the charge sheet to enable him to give an effective reply. Failure to supply relevant documents rendered the enquiry bad in law. Supply of documents with show cause notice and charge sheet is an essential requirement to conduct enquiry in consonance with law. Charge No.1, mentioned in the charge sheet, is wholly trivial. Assuming it to be correct, amount of Rs.1,000.00 was admittedly deposited in the account of Ms. Sikdar on 02.03.2009, since 01.03.2009 happened to be a Sunday. The second charge does not even constitute to be a misconduct, defined by Bipartite Settlement. The bank had abused its position and authority for extraneous and malafide reasons with a view to punish him. He denied all allegations claiming that the said charge was fabricated by Shri Anil Kumar Mishra, as a counter blast to a civil suit filed by his wife against the former. The bank had not made any complaint to the police in respect of charges of impersonation. The bank had not tried to enquire the facts from Municipal Corporation of Delhi in that regard. Impersonation is an offence. Enquiry Officer never asked Shri Mishra to produce originals of the letters, alleged to have been written by him to the Deputy Commissioner, Municipal Corporation of Delhi. The Enquiry Officer recorded his findings, the basis of photocopies of those letters. On the other hand, the Appellate Authority, shifted onus on the claimant when following observations were made in order dated 25.01.2012:

“Bank had given all opportunities to the appellant to produce witness and documents in defence of his case in the enquiry, but he failed to do so.”

7. Claimant presents that the above observations make it apparent that the bank had shifted burden on him, which is in contravention of settled law. The enquiry conducted against him was illegal and motivated. The Enquiry Officer rejected all his pleas and accepted version of the bank. Proceedings before the Enquiry Officer

happened to be a mock show. Report of the Enquiry Officer is totally perverse. Punishment of compulsory retirement is wholly unjust, excessive and disproportionate. Shri Anil Kumar Mishra wrote to the bank on 29.04.2011 projecting therein that he made complaint against him on being misguided by someone. He regretted and decided to withdraw his complaint, in the letter referred above. These facts were not taken into account at all. The Appellate Authority also failed to apply his mind to his submissions. He presents that relief of reinstatement in service with continuity and full back wages may be awarded in his favour.

8. Claim was demurred by the bank pleading that the charge sheet dated 29.05.2010 was served on the claimant, wherein it was alleged that he impersonated as an IAS Officer working as Director, Central Vigilance Commission, Government of India, New Delhi, when he wrote letters to the Deputy Commissioner, Municipal Corporation of Delhi, on various occasions. It was also alleged that he painted words 'Govt. of India' on number plate of the car bearing No.DL 3C AG 9712. The said car was registered in his name by the Registering Authority, Sheikh Sarai, New Delhi. It was also alleged that he had not deposited Rs.1000.00 in the account of Ms.Poonam Sikdar on 28.02.2009 and made deposit of that amount on 02.03.2009, pursuant to the said charge sheet, domestic enquiry was constituted. Action against the claimant was taken in accordance with provisions of Bipartite Settlements and principles of natural justice. The Enquiry Officer recorded his findings on 20.09.2010, wherein he concluded that charges stood proved. The Disciplinary Authority, vide order dated 25.02.2011, awarded punishment of compulsory retirement with superannuation benefits. Appeal preferred by the claimant was dismissed, vide order dated 25.01.2012. Orders passed by the Disciplinary Authority as well Appellate Authority are legal and justified.

9. The bank presents that even at earlier point of time, charge sheet was served on the claimant for acts of gross misconduct and punishment of stoppage of two increments with cumulative effect was awarded to him, vide order dated 31.07.1993. Another charge sheet was served upon him in the year 1996. After domestic enquiry, punishment of stoppage of two increments was imposed upon him, vide order dated 12.08.1997. Show cause notice dated 27.09.2002 was issued to the claimant for gross misconduct of not accounting for cash properly in books of the bank, resulting to cash shortage of Rs.1000.00. Punishment of withdrawal of special pay of Cash Incharge was imposed upon him, vide order dated 09.08.2002. These facts make it apparent that service record of the claimant was not clean and satisfactory. Copy of daily order sheet dated 12.06.2010 establishes that documents relied by the bank were given to the claimant. There has been no denial of opportunity to defend in the enquiry.

10. When an employee misrepresents his status, image of the bank would be tarnished. Such act constitutes misconduct within the meaning of "doing acts prejudicial to the interest of the bank". Punishment awarded to the claimant commensurate to his misconduct. His claim being not maintainable, may be dismissed, pleads the bank.

11. On pleadings of the parties, following issues were settled:

- (I) Whether enquiry conducted by the bank against the claimant was in violation of principles of natural justice?
- (II) Whether punishment awarded to the claimant commensurate to his misconduct?
- (III) Whether claimant is entitled to relief of reinstatement in service?

12. Issue No.I was treated as preliminary issue.

13. To discharge onus resting on it the bank examined Shri K.P. Jatav. Claimant entered the witness box to fend his claim.

14. After hearing the parties and on consideration of the evidence, documentary as well as ocular facts, preliminary issue was decided in favour of the bank and against the claimant, vide order dated 03.06.2013.

15. Arguments on proportionality of punishment were heard at the bar. Shri Inderjit Singh, authorized representative, advanced arguments on behalf of the claimant. Shri Rajat Arora, authorised representative, raised submissions on behalf of the bank. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows :

## Issue No. 2

16. In order to assess as to whether punishment awarded to the claimant is proportionate to his misconduct, it is expedient to note charges levelled against him. Those charges peep out of the charge-sheet dated 29.5.2010, contents of which are as follows:

### "Charges No.1

That on 28.02.2009, while working at cash receipt counter, Smt. Purnima Sikdar, Staff Officer of Greater Kailash II, branch had handed over to you across the counter cash amounting to Rs.1000 alongwith paying in slip for depositing the same in her O/D account No. 603728110000005, maintained jointly with her husband, Shri A. Sikdar. You accepted the cash and handed over to Smt. Purnima Sikdar counterfoil receipt duly signed by you. Instead of accounting the cash in bank books you misappropriated the same. When Smt.Purnima Sikdar pointed out to you about non crediting of the cash

in her O/D account, you took the counterfoil receipt from her on the plea that credit might have been given in some other account and after some time returned the same counterfoil receipt to her after the date of receipt of cash was changed from 28.02.2009 to 02.03.2009 and simultaneously changing the date in the cash receipt voucher from 28.02.2009 to 02.03.2009. The amount was actually deposited by you only on 02.03.2009.

Your aforesaid acts of misappropriating Rs.1000 and creating record to show that cash was received by you only on 2.3.2009 by tampering the paying-in-slip, if proved, would amount to gross misconduct of “doing any act prejudicial to the interest of the bank” within the meaning of Clause 5(j) of the Memorandum of Settlement dated 10.4.2002.

#### Charge No. II

You projected yourself in your neighbourhood as an IAS officer working as Director in Central Vigilance Commission, Government of India, New Delhi and sent a letter to the Deputy Commissioner, Municipal Corporation of Delhi under your signature on 11.11.2003 stating therein and posing yourself as an IAS officer working in Central Vigilance Commission, Government of India, New Delhi. You also wrote a letter dated 10.3.2004 addressed to Director (Horticulture) Municipal Corporation of Delhi, wherein you posed yourself as an IAS officer. Both the letters are in your own handwriting and signed by you. In a third typed letter Ref. No.RK:SCD:CVC:101 dated 4.3.2004 addressed to the Deputy Commissioner, Municipal Corporation of Delhi, New Delhi duly signed by you, you again posed yourself as an IAS officer. All the said 3 letters bear your residential address i.e. 28, Rampuri, (GF), Kalkaji, New Delhi-110019. To prove your position/status, in the society as a Government of India official, you got painted the words/letters ‘Govt. of India’ on the Number plate of your four wheeler vehicle i.e. car bearing Registration No.DL 3C AG 9712 registered in your name.

Your aforesaid acts of falsely projecting yourself as an IAS officer, misrepresenting about your status/claiming that you are a Top Executive in Central Vigilance Commission, New Delhi, knowing fully well that you are posted and working as Staff-Computer Terminal Operator in Bank, if proved, would amount to gross misconduct of “doing an act prejudicial to the interest of the bank” within the meaning of Clause 5(j) of the Memorandum of Settlement dated 10.4.2012.”

17. Findings, recorded by the Enquiry Officer are also to be noted, which are extracted thus out of the report dated 20.9.2010 :

#### “Analysis of evidence

##### Charge No. 1

The CSE received the cash of Rs.1000/- on 28.2.2009 from Mrs.P.Sikdar for the credit of her joint A/C No. 6037281100000005 and handed over the counter foil duly stamped & signed by the CSE to Mrs. Purima Sikdar, but the cash was not accounted on 28.02.2009 upon enquiry by Mrs. Sikdar, about credit of Rs.1000/- to her A/C Mr. S.C. Das. The CSE took the counterfoil receipt on the plea that credit might have been given to some other A/c and after lapse of some time, the same was returned to Mrs.Sikdar. The date of receipt was changed from 28.2.2009 to 2.3.2009 and voucher date was also changed from 28.2.2009 to 02.3.2009. It was not authenticated by the account holder as per the Bank’s practice. The CSE/ defence is countering it with timings of the entry i.e. 9.41 AM of 2.3.2009 where as it was about misappropriation of Rs.1000/- for 2 days. It was not accounted on the date of the deposit i.e. 28.2.09. It was actually accounted on 02.03.2009. The defence could not prove that the cash of Rs.1000/- was tendered on 02.03.2009 but not on 28.02.2009 for the credit of A/c of Mrs.Sikdar. Whereas the P.O. produced various documents (M-1, 2, M-4, & M6) and witnesses (MW-1, & MW-2) which prove it that the cash of Rs.1000 was tendered on 28.02.2009 for the credit of joint A/c of Mrs. Purnima Sikdar & not on 02.03.2009.

##### Charge No. 2

The CSE projected himself as an IAS Officer in his neighbourhood working as Director in CVC, Govt. of India, New Delhi. The CSE wrote and sent three letters dated 11.11.2003, 10.3.2004 & 04.03.2004 to Dy. Commissioner, MCD, Director (Horticulture), MCD, Delhi and Dy. Commissioner, MCD, Delhi respectively, signed by the CSE & posing himself as an IAS Officer, working in CVC, Govt. of India, New Delhi. The CSE got painted his car number plate (Regn. Number DL 3C AG 9712) with words “Govt. of India”. The P.O. produced various documents and witnesses (M-7 to M-22 and MW.3 to MW.7) to prove the charge No.2. The CSE could not produce any document or witness in his defence. During the enquiry proceedings, the CSE and Defence Representative were given sufficient time and chance to produce documents and witness for CSE defence. The CSE could cover his defence through brief only. The CSE instead of produce his witness and documents for his defence preferred to counter the management documents and witnesses. The CSE mainly made a point not

to rely upon management witnesses on unlogical ground i.e. (i) the I.O. acted in a partisan manner. (ii) documents produced in the enquiry were zeroxed copy. The CSE didn't raise this issue when he inspected the document. No objection was made either by CSE or by D.R. The CSE didn't bring any point which lead to the partisan manner of the I.O. MW-5 witness is also questioned by the CSE on the ground that there was a litigation/court case between MW-5 & the CSE's wife. But the CSE did not cross examine the MW-7 to that extent which indicate their personal enmity/grouse. As far as hand writing and style of signature are concerned, the MW-3 (who is having rich experience of banking) the Chief Manager confirmed the signature and writing of the CSE on documents No.M-9, M-10 and M-11) MW-6 and MW-7 witness are also questioned by the CSE because MW-6 gave his two residential addresses and MW-7 was contacted over telephone by the I.O. MW-6 himself explained his position regarding two addresses while his deposition. Likewise MW-7 also explained his position in the enquiry proceedings. Hence, the CSE objection cannot be considered justified. The CSE also raised why MW-5 took 2 years to know about correct status of the CSE. MW-5 is a business man. No business man can afford to spare time to find out the status of his neighbour on exclusively. In a routine and a casual manner, such a long time may be considered a reasonable time. Regarding painting of word "Govt. of India" on the number plate of the CSE's Car, it was not painted by himself, surprised him as somebody got it painted and got photographed but the CSE didn't think proper to lodge a police complaint in this regard. He preferred to keep mum on this issue and this cannot be believed. Rest of the issues which are mentioned in the brief by the CSE are not connected with the charges.

#### **Findings :**

On the basis of the documents, witnesses, examination in chief, cross examination, brief by P.O. & CSE, & enquiry proceedings I am of the considered opinion that both the charges are correct and proved beyond doubt. Submitted my enquiry report."

18. Now efforts would be made to assess as to whether punishment commensurate to misconduct committed by the claimant. Before adverting to the exercise it would be expedient to note the legal propositions. It is well settled proposition of law that right of an employer to inflict punishment of discharge or dismissal or compulsory retirement is not unfettered. The punishment imposed must

be commensurate with gravity of the misconduct, proved against the delinquent workman. Prior to enactment of section 11-A of the Act, it was not open to the industrial adjudicator to vary the order of punishment on finding that the order of dismissal was too severe and was not commensurate with the act of misconduct. In other words, the industrial adjudicator could not interfere with the punishment as it was not required to consider propriety or adequacy of punishment or whether it was excessive or too severe. The Apex Court, in this connection, had, however, laid down in *Bengal Bhatdee Coal Company* [1963(1) LLJ 291] that where order of punishment was shockingly disproportionate with the act of the misconduct which no reasonable employer would impose in like circumstances, that itself would lead to the inference of victimization or unfair labour practice which would vitiate order of dismissal or discharge. But by enacting the provisions of section 11-A of the Act, the Legislature has transferred the discretion of the employer, in imposing punishment, to the industrial adjudicator. It is now the satisfaction of the industrial adjudicator to finally decide the quantum of punishment for proved acts of misconduct, in cases of discharge or dismissal. If the Tribunal is satisfied that the order of discharge or dismissal is not justified in any circumstances on the facts of a case, it has the power not only to set aside order of punishment and direct reinstatement with back wages, but it has also the power to impose certain conditions as it may deem fit and also to give relief to the workman, including award of lesser punishment in lieu of discharge or dismissal.

19. It is established law that imposing punishment for a proved act of misconduct is a matter for the punishing authority to decide and normally it should not be interfered with by the Industrial Tribunals. The Tribunal is not required to consider the propriety or adequacy of punishment. But where the punishment is shockingly disproportionate, regard being had to the particular conduct and past record, or is such as no reasonable employer would ever impose in like circumstance, the Tribunal may treat the imposition of such punishment as itself showing victimization or unfair labour practice. Law to this effect was laid by the Apex Court in *Hind Construction and Engineering Company Labour* [1965 (1) LLJ 462]. Likewise in *Management of the Federation of Indian Chambers of Commerce and Industry* [1971 (II) LLJ 630] the Apex Court ruled that the employer made a mountain out of a mole hill and had blown a trivial matter into one involving loss of prestige and reputation and as such punishment of dismissal was held to be unwarranted. In *Ram Kishan* [1996 (1) LLJ 982] the delinquent employee was dismissed from service for using abusive language against a superior officer. On the facts and in the circumstances of the case, the Apex Court held that the punishment of dismissal was harsh and disproportionate to the gravity of the charge imputed to the delinquent. It was ruled therein, "when abusive language is used by anybody against a superior,



it must be understood in the environment in which that person is situated and the circumstances surrounding the event that led to the use of abusive language. No straight-jacket formula could be evolved in adjudicating whether the abusive language in the given circumstances would warrant dismissal from service. Each case has to be considered on its own facts”.

20. In *B.M.Patil* [1996 (11)LLJ 536], Justice Mohan Kumar of Karnataka High Court observed that in exercise of discretion, the disciplinary authority should not act like a robot and justice should be moulded with humanism and understanding. It has assess each case on its own merit and each set of fact should be decided with reference to the evidence regarding the allegation, which should be basis of the decision. The past conduct of the worker may be a ground for assuming that he might have a propensity to commit the misconduct and to assess the quantum of punishment to be imposed. In that case a conductor of the bus was dismissed from service for causing revenue loss of 50p to the employer by irregular sale of tickets. It was held that the punishment was too harsh and disproportionate to the act of misconduct.

21. After insertion of section 11-A of the Act, the jurisdiction to interfere with the punishment is there with the Tribunal, who has to see whether punishment imposed by the employer is commensurate with the gravity of the act of misconduct. If it comes to the conclusion that the misconduct is proved, it may still hold that the punishment is not justified because misconduct alleged and proved is such as it does not warrant punishment of discharge or dismissal and where necessary, set aside the order of discharge or dismissal and direct reinstatement with or without any terms or conditions as it thinks fit or give any other relief, including the award of lesser punishment, in lieu of discharge or dismissal, as the circumstance of the case may warrant. Reference can be made to a precedent in *Sanatak Singh* (1984 Lab. I.C.817). The discretion to award punishment lesser than the punishment of discharge or dismissal has to be judiciously exercised and the Tribunal can interfere only when it is satisfied that the punishment imposed by the management is highly disproportionate to the decree of the guilt of the workman. Reference can be made to the precedent in *Kachraji Motiji Parmar* [1994 (II) LLJ 332]. Thus it is evident that the Tribunal has now jurisdiction and power of substituting its own measure of punishment in place of the managerial wisdom, once it is satisfied that the order of discharge or dismissal is not justified. On facts and in the circumstances of a case, section 11A of the Act specifically gives two folds powers to the Industrial Tribunal, first is virtually the power of appeal against findings of fact made by the Enquiry Officer in his report with regard to the adequacy of the evidence and the conclusion on facts and secondly of foremost importance, is the power of reappraisal of quantum of punishment.

22. Power to set aside order of discharge or dismissal and grant relief of reinstatement or lesser punishment is not untrammelled power. This power has to be exercised only when Tribunal is satisfied that the order of discharge or dismissal was not justified. This satisfaction of the Tribunal is objective satisfaction and not subjective one. It involves application of the mind by the Tribunal to various circumstances like nature of delinquency committed by the workman, his past conduct, impact of delinquency on employer's business, besides length of service rendered by him. Furthermore, the Tribunal has to consider whether the decision taken by the employer is just or not. Only after taking into consideration these aspects, the Tribunal can upset the punishment imposed by the employer. The quantum of punishment cannot be interfered with without recording specific findings on points referred above. No indulgence is to be granted to a person, who is guilty of grave misconduct like cheating, fraud, misappropriation of employers fund, theft of public property etc. A reference cannot be made to the precedent in *Bhagirath Mal Rainwa* [1995 (1)LLJ 960].

23. On turning to facts it is noted that the claimant argues that impersonation as an IAS Officer is not a misconduct under Bipartite Settlements. This contention is refuted on behalf of the bank. In order to narrow down the controversy provisions of awards and settlements, applicable to award staff of the bank, are to be scanned. Para 521.4 of the Shastri Award defines “gross misconduct” on the part of an employee as follows:

“521.4 By the expression “gross misconduct” shall be meant any of the following acts and omissions on the part of an employee;

- (a) engaging in any trade or business outside the scope of his duties except with the permission of the bank;
- (b) unauthorized disclosure of information regarding the affairs of the bank or any of its customers or any other person connected with the business of the bank which is confidential or the disclosure of which is likely to be prejudicial to the interests of the bank;
- (c) drunkenness or riotous or disorderly or indecent behavior on the premises of the bank;
- (d) willful damage or attempt to cause damage to the property of the bank or any of its customers;
- (e) willful insubordination or disobedience of any lawful and reasonable order of the management or of a superior;

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| <p>(f) habitual doing of any act which amounts to “minor misconduct” as defined below, “habitual” meaning a course of action taken or persisted in notwithstanding that at least on three previous occasions censure or warnings have been administered or an adverse remark has been entered against him</p> <p>(g) willful slowing down in performance of work;</p> <p>(h) gambling or betting on the premises of the bank;</p> <p>(i) speculation in stocks, shares, securities or any commodity, whether on his account or that of any other persons;</p> <p>(j) doing any act prejudicial to the interests of the bank, or gross negligence or negligence involving or likely to involve the bank in serious loss;</p> <p>(k) giving or taking a bribe or illegal gratification from a customer or an employee of the bank;</p> <p>(l) abetment or instigation of any of the acts or omissions above mentioned”.</p> | <p>“habitual” meaning a course of action taken or persisted in, notwithstanding that at least on three previous occasions censure or warnings have been administered or an adverse remark has been entered against him;</p> <p>(g) willful slowing down in performance of work;</p> <p>(h) gambling or betting on the premises of the bank;</p> <p>(i) speculation in stocks, shares, securities or any commodity whether on his account or that of any other persons;</p> <p>(j) doing any act prejudicial to the interest of the bank or gross negligence or negligence involving or likely to involve the bank in serious loss;</p> <p>(k) giving or taking a bribe or illegal gratification from a customer or an employee of the bank;</p> <p>(l) abetment or instigation of any of the acts or omission above mentioned;</p> <p>(m) knowingly making a false statement in any document pertaining to or in connection with his employment in the bank;</p> |
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24. Catalogue of “gross misconduct” was modified time and again and it was lastly modified by para 5 of bipartite settlement dated 10.4.2002 as follows:

“(5) By the expression “gross misconduct” shall be meant any of the following acts and omissions on the part of an employee:

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| <p>(a) engaging in any trade or business outside the scope of his duties except with the written permission of the bank;</p> <p>(b) unauthorized disclosure of information regarding the affairs of the bank or any of its customers or any other person connected with the business of the bank which is confidential or the disclosure of which is likely to be prejudicial to the interests of the bank;</p> <p>(c) drunkenness or riotous or disorderly or indecent behavior on the premises of the bank;</p> <p>(d) willful damage or attempt to cause damage to the property of the bank or any of its customers;</p> <p>(e) willful insubordination or disobedience of any lawful and reasonable order of the management or of a superior;</p> <p>(f) habitual doing of any act which amounts to “minor misconduct” as defined below,</p> | <p>(n) resorting to unfair practice of any nature whatsoever in any examination conducted by the Indian Institute of Bankers or by or on behalf of the bank and where the employee is caught in the act of resorting to such unfair practice and a report to that effect has been received by the bank from the concerned authority;</p> <p>(o) resorting to unfair practice of any nature whatsoever in any examination conducted by the Indian Institute of Bankers or by or on behalf of the bank in cases not covered by the above Sub-Clause (n) and where a report to that effect has been received by the bank from the concerned authority and the employee does not accept the charge;</p> <p>(p) remaining unauthorisedly absent without intimation continuously for a period exceeding 30 days;</p> <p>(q) misbehaviour towards customers arising out of bank’s business;</p> <p>(r) contesting election for Parliament/ Legislative Assembly/Legislative</p> |
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Council/local bodies/municipal corporation/panchayat, without explicit written permission of the bank;

- (s) conviction by a criminal Court of Law for an offence involving moral turpitude;
- (t) indulging in any act of 'sexual harassment' of any woman at her workplace;

**Note:** Sexual harassment shall include such unwelcome sexually determined behaviour (whether directly or otherwise) as

- (a) physical contact and advances;
- (b) demand or request for sexual favours;
- (c) sexually coloured remarks;
- (d) showing pornography; or
- (e) any other unwelcome physical, verbal or non-verbal conduct of a sexual nature.

(For State Bank of India)

- (u) the giving or taking or abetting the giving or taking of dowry or demanding directly or indirectly from the parents or guardians of a bride or bridegroom, as the case may be, any dowry".

25. Bipartite settlement dated 10<sup>th</sup> April, 2002, was entered into between the management of 52 'A' class banks as represented by the Indian Bank's Association and their workmen as represented by the All India Bank Employee Association, National Confederation of Bank Employees and Indian National Bank employees Federation. The short recital of the settlement provides that the agreement is to detail procedure for taking disciplinary action against workmen in the bank, who were parties to the agreement. Para 2 of the settlement defines the expression "offence" to mean any offence involving moral turpitude for which an employee is liable to conviction and sentence under any provisions of law. Para 3 of the settlement details the procedure under which disciplinary action may be initiated against an employee, in case of his acquittal of the offence by a court of law. For sake of convenience, the provision of para 3 of the settlement are reproduced as follows :

- "3. (a) When in the opinion of the management an employee has committed an offence, unless he be otherwise prosecuted, the bank may take steps to prosecute him or get him prosecuted and in such a case he may also be suspended.
- (b) If he be convicted, he may be dismissed with effect from the date of his

conviction or may be given any lesser form of punishment as mentioned in Clause 6 below.

- (c) If he be acquitted, it shall be open to the management to proceed against him under the provisions set out below in Clauses 11 and 12 infra relating to discharges. However, in the event of the management deciding after enquiry not to continue him in service, he shall be liable only termination of service with three months' pay and allowances in lieu of notice. And he shall be deemed to have been on duty during the period of suspension, if any, and shall be entitled to the full pay and allowance minus such subsistence allowance as he has drawn and to all other privileges for the period of suspension provided that if he be acquitted by being given the benefit of doubt he may be paid such portion of such pay and allowances as the management may deem proper, the period of his absence shall not be treated as a period spent on duty unless the management so directs.

- (d) If he prefers an appeal or revision application against his conviction and is acquitted, in case he had already been dealt with as above and he applies to the management for reconsideration of his case, the management shall review his case and may either reinstate him or proceed against him under the provisions set out below in Clauses 11 and 12 infra relating to discharge, and the provision set out above as to pay, allowances and the period of suspension will apply, the period up-to-date for which full pay and allowances have not been drawn being treated as one of suspension. In the event of the management deciding, after enquiry not to continue him in service, the employee shall be liable only for termination with three months' pay and allowances in lieu of notice, as directed above".

26. Out of the provision of para 2, 3, 11 and 12 of the settlement, it emerges that an enquiry may be conducted against an employee of the bank if he allegedly commits an offence involving moral turpitude. It is a matter of common knowledge that every offence punishable under law would not amount to an offence involving moral turpitude. To term an offence involving moral turpitude, the act must be vile or harmful to society

in general or contrary to excepted rules or rights and duties between man and man. The test for whether an offence involves moral turpitude are as follows: (1) whether the act leading to conviction was such as could shock the moral conscience of society in general? (2) whether the motive which led to the act was a base one? (3) whether on account of the act having been committed the perpetrator could be considered to be of a depraved character or a person who was to be looked down upon by the society?

27. As to whether a person has committed an offence involving moral turpitude, there are two ways of looking at the matter – one of considering the nature of the act done and the other of considering the nature of the offence punished under the statutory provisions. As noted above the claimant impersonated himself as an IAS Officer to the local residents as well as to the municipal authorities. He also got words “Govt. of India” painted on number plate of his car to give support to his acts of impersonation. Evidently above acts were done outside his duty hours and in the colony where he was residing. The rule of law is that where a person has entered into the position of servant, if he does anything incompatible with the due or faithful discharge of his duty to his master, the latter has a right to dismiss him. The relation of master and servant implies necessarily that the servant shall be in a position to perform his duty duly and faithfully, and if by his own act he prevents himself from doing so, the master may dismiss him.

28. What circumstances will put a servant in to the position of not being to perform in a due manner his duties, or of not being able to perform his duties in a faithful manner, is impossible to enumerate. Innumerable circumstances have actually occurred which fell within the proposition, and innumerable other circumstances which never had yet occurred will occur, which also will fall within the proposition. But if a servant is guilty of such a crime outside his service as to make it unsafe for master to keep him in his employ, the servant may be dismissed by his master, and if the servant’s conduct is so grossly immoral that all reasonable men would say that he cannot be trusted, the master may dismiss him. See precedent in *Pearce* (1886 QBD 536).

29. If a servant conducts himself in any way inconsistent with the faithful discharge of his duty in the service, it is a misconduct which justifies immediate dismissal. That misconduct need not be misconduct in the carrying on of the service or the business. It is sufficient if it is a conduct which is prejudicial or is likely to be prejudicial to the interest or to the reputation of the master. The hour and place of the incident are not very relevant matters in deciding the question as to whether a particular act of an employee is or is not within the ambit of the

disciplinary jurisdiction of the employer and it is the nature of the act alone which is really material. See *Diwan Badridas* [1962 (1) LLJ 526]. From above precedents it is evident that in case of moral turpitude the management will have jurisdiction to initiate disciplinary action against an employee, even if act of indiscipline takes place away from the premises when he is employed and beyond his duty norms. Same proposition has been enshrined in the provisions of para 2, 3, 11 & 12 of the aforesaid memorandum of settlement.

30. With the above aspects, collected from other parts of the settlement referred above, acts committed by the claimant are to be appreciated to note as to whether it amount to an offence that too falling within the ambit of moral turpitude. As noted above, the claimant impersonated himself as an IAS Officer to the local residents as well as to the municipal authorities. He got words “Govt. of India” painted on number plate of his car. He wrote letters to the Deputy Commissioner, Municipal Corporation of Delhi boasting of his position. He collected funds from local residents for development of a park, but wrote letters to municipal authorities to get that work done. These facts make it clear that the misconduct committed by the claimant shocks moral conscience of the society in general. The claimant is such type of person who would be looked down upon by the society. Hence his acts are such which fall within the ambit of moral turpitude to give jurisdiction to the bank to punish him. Even otherwise such acts are prejudicial to the interest of the bank, hence are gross misconduct within clause 5(j) of Bipartite Settlement dated 10.4.2002.

31. As far as charge No.1 is concerned, forgery in cash receipt is a serious act. The claimant changed the date from 28.2.2009 to 2.3.2009 in the cash receipt voucher after obtaining it from Smt. Poornima Sikdar, when she made a complaint of non deposit of a sum of Rs.1000 in their O/ D account. Forgery in cash receipt voucher is an offence involving moral turpitude. Such offence is also prejudicial to the interest of the bank, as coined by clause 5(j) of Bipartite Settlement dated 10.4.2002.

32. Now it would be considered as to whether punishment awarded to the claimant is harsh. The claimant was awarded punishment of compulsory retirement, with superannuation benefits. The acts of misconducts committed by the claimant tantamount to tarnish the image of the bank and are prejudicial to the interest of the bank. Therefore I am of the considered opinion that no case is made out to show that punishment awarded to the claimant was disproportionate to acts of his misconducts, warranting an interference by the Tribunal. I am of the considered opinion that punishment awarded to the claimant commensurate to his misconducts. Issue is, therefore, answered in favour of the bank and against the claimant.



**Issue No. III**

33. Not even an iota of evidence was brought over the record by the claimant to question legality of punishment awarded to him. When there is vacuum of evidence, it cannot be said that punishment awarded to the claimant was not justified. There cannot be any reason to inter-meddle with the punishment of compulsory retirement with superannuation benefits awarded to the claimant. Consequently it is announced that punishment of compulsory retirement with superannuation benefits awarded to the claimant vide order dated 25.02.2011 commensurate to his misconduct and withstands standards of legality as well as justifiability. No interference is called for in the punishment by this Tribunal. Claim put forward by Shri Das is liable to be brushed aside. Accordingly, his claim is dismissed. An award is passed in favour of the bank and against the claimant. It be sent to the appropriate Government for publication.

Dated: 25.11.2013

Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 29 जनवरी, 2014

**का.आ. 516.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चैन्नई के पंचाट (संदर्भ संख्या 59/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-1-2014 को प्राप्त हुआ था।

[सं. एल-12012/02/2012-आई आर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 29th January, 2014

**S.O. 516.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 59/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the Management of Indian Bank and their workmen, received by the Central Government on 29-1-2014.

[No. L-12012/02/2012-IR (B-II)]

RAVI KUMAR, Section Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
CHENNAI**

Friday, the 13th December, 2013

**Present :** K.P. PRASANNA KUMARI, Presiding Officer

**Industrial Dispute No. 59/2012**

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Indian Bank and their workman).

**BETWEEN:**

Sri K. Sampath : 1<sup>st</sup> Party/Petitioner

**AND**

The General Manager : 2<sup>nd</sup> Party/Respondent  
Indian Bank Zonal Office  
359, Dr. Nanjappa Road  
Coimbatore-18

**Appearance:**

For the 1<sup>st</sup> Party/Petitioner : Sri J. Thomas  
Jeyaprabhakaran,  
Authorized  
Representative

For the 1<sup>st</sup> Party/Respondent : M/s T.S. Gopalan &  
Co., Advocates

**AWARD**

The Central Government, Ministry of Labour & Employment vide its Order No. L-12012/2/2012-IR(B-II) dated 31.08.2012 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

“Whether the action of the management of Indian Bank, Coimbatore in imposing the punishment of compulsory retirement on Sri K. Sampath, Ex-Sub Staff is legal and justified?

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 59/2012 and issued notice to both sides. The petitioner has appeared through his representative and the Respondent through its counsel and had filed their claim, counter and rejoinder statement respectively.

3. The averment in the Claim Statement filed by the petitioner in brief are these:

The petitioner was employed as Sub-Staff in the Respondent Bank and was working at Perianaickenpalayam branch. The petitioner was issued with a Show Cause Notice dated 29.08.2009 alleging that he failed to bring to the notice of the higher authorities of the Respondent misappropriation committed by the then Branch Manager by debiting GL Parking Account involving more than Rs. 1.00 lakh, that he influenced the Branch Manager misusing the position in getting loans to close relatives and that no activities were undertaken by those relatives who borrowed amount, that the petitioner misused his position and took illegal gratification, influenced one Sundaralingam to get loan documents and withdrawal slips under retail trade facility for Rs. 50,000/- in his name and

appropriated the amount. Without accepting the explanation given by the petitioner, the Respondent ordered an enquiry. It was found in the enquiry that the first charge against the petitioner is partially proved and the second charge is fully proved. The third charge is found not established. On the basis of the enquiry report, the Respondent imposed the punishment of Compulsory Retirement on the petitioner. Though, the petitioner preferred an appeal against this order, the same was dismissed. The Industrial Dispute is raised accordingly. The petitioner has not committed any of the misconduct alleged against him. The punishment imposed on the petitioner is without any justification. The petitioner is entitled to be reinstated in service with continuity of service, back wages and other attendant benefits.

4. The Respondent has filed Counter Statement contending as follows:

The petitioner was working as Sub-Staff in Perianaickenpalayam branch of the Respondent Bank situated near Coimbatore. During inspection of the branch in August 2009, various irregularities and deviation in the sanction of loans came into surface. An investigation was ordered on account of this. On investigation it was revealed that the Branch Manager had misused his position and had sanctioned loans to various parties including the petitioner and members of his family. On enquiry it was revealed that some of the borrowers had not actually availed loans but the loans were taken by the Branch Manager and the Manager agreed to sanction loans on recommendation of the petitioner. Overdraft facility against security was seen granted to the petitioner's wife, Vijayalakshmi in her capacity as the proprietress of Vijayalakshmi Stores. The property of the petitioner was offered as security for this loan. The Manager had sanctioned loans exceeding his powers. On sanctioning loan to one Murugesan, the property of petitioner's wife Vijayalakshmi was given as collateral security. This loan was meant for the petitioner. It could not have been sanctioned without understanding between the petitioner and the Manager. The son of the petitioner had availed education loan of Rs. 3.57 lakhs. This was sanctioned without the knowledge of the Zonal Office. The petitioner's wife was given loan as a retail trader without reference to the Zonal Office though she was not doing any business. Loan were also sanctioned to petitioner's brother Krishnamurthy, Mohan and Ramamurthy and also Girija and Jyothi, Sisters-in-Law of the petitioner. All these loans were sanctioned on the basis of understanding between the petitioner and the Branch Manager. A Charge Sheet was issued to the petitioner for the misconduct committed by the petitioner. An enquiry was conducted. Charges 1 and 2 were found established. Accordingly, the petitioner was given the punishment of Compulsory Retirement with superannuation benefits. The petitioner has received his gratuity and provident fund dues. The petitioner is not entitled to any relief.

5. The petitioner has filed a rejoinder denying the allegations made against him in the Counter Statement.

6. The evidence in the case consists of the oral evidence of WW1 and documents marked as Exs.W1 to Ex.W22 and Exs.M1 to Ex.M7.

**7. The Points for consideration are :**

- (i) Whether the punishment of Compulsory Retirement imposed by the Respondent on the petitioner is legal and justified?
- (ii) What is the relief to which the petitioner is entitled?

**The Points**

8. The petitioner was admittedly working as Sub-Staff in Perianaickenpalayam branch of the Respondent Bank. The Respondent has alleged that the petitioner has committed irregularities amounting to misconduct while he worked in Perianaickenpalayam branch. The allegation is that the petitioner had influenced the then Manager of the branch and had availed several loans in the name of his wife, son and other close relatives. It is also alleged that even though the petitioner was aware of the several irregularities conducted by the Branch Manager on his own, he did not inform the same to the higher authorities under the Whistle Blower Policy adopted by the bank. There is also an allegation that by exercising influence on one Sundaralingam, the petitioner had obtained loan documents and withdrawal slips signed by him for availing loan and thus obtained Rs. 50,000.

9. The first charge against the petitioner in the enquiry proceedings is extracted below :

“That you failed to bring to the notice of your higher authorities under Whistle Blower Policy misappropriation committed by the then Branch Manager, T.R. Ajay Khosh to the debit of GL Parking Account (Recovery Charges etc. debited to various loan accounts on various dates transferred to GL parking accounts and from this GL Parking Loan, cash was withdrawn) on 34 occasions from 19.01.2008 to 01.07.2009 involving a total amount of Rs. 1050.10. The Enquiry Officer has found that this charge against the petitioner is partially proved. The Enquiry Officer has found that the Sub-Staff members of the branch did not have adequate knowledge of the various circulars issued by the higher authorities. The Enquiry Officer has felt that no proof has been given to the effect that the branch followed the practice of reading and explaining the contents of the circulars in staff meetings. To expect the Sub-Staff who stitches the vouchers to go through the contents and find out the heads to which they are related is unreasonable, the Enquiry Officer has felt. In spite of this reasoning, the Enquiry Officer has stated that all the staff of the branch including the petitioner were in the knowhow of the irregularities committed by the Manager and has not bothered to report to the Circle Office. It was

on the basis of this, the Enquiry Officer has found that the charge has been partially proved. Certainly, the reasoning of the Enquiry Officer that a Sub-Staff of the bank who is having minimum education only and is not expected to go through the contents of the documents, if any, put to them could not be expected to go through them or to make out whether any irregularities were being done by their superior officers is sound. The charge against the petitioner was that he failed to bring to the notice of the higher authorities about the irregularities or the misappropriation committed by the Branch Manager under the Whistle Blower policy. The question is not whether the petitioner was also aware of the misappropriation, if any, conducted by the Branch Manager but whether he was aware of the fact that there was a duty cast on him under the Whistle Blower Policy to report to the higher authorities. True, in the normal course, any deviation from the normal procedure is a matter which is to be resisted by the others. However, as pointed out by the Enquiry Officer there were several other Officers in the branch, all higher in rank to the petitioner who were more competent to make any such report to the higher authorities. So such a charge against the petitioner has no basis. Even the finding that the charge is partially proved could not be accepted.

10. The second charge against the petitioner is this :

That you have influenced the Branch Manager by misusing your position in getting the loans as detailed below to the close relatives and known persons. These loan were sanctioned though no activities were undertaken by the borrowers :

| MEX No. | Facility       | Name of the Party        | Limit in Lacs | Date of Sanction |
|---------|----------------|--------------------------|---------------|------------------|
| 1.      | SOD            | Sri Vijayalakshmi Stores | 4.00          | 14.08.2009       |
| 2.      | Education Loan | S. Kishore               | 3.57          | 10.09.2008       |
| 3.      | R.T.           | Vijayalakshmi            | 0.50          | 19.07.2006       |
| 4.      | R.T.           | K. Krishnamurthy         | 0.48          | 12.07.2007       |
| 5.      | R.T.           | K. Mohan                 | 0.50          | 09.08.2006       |
| 6.      | R.T.           | R. Girija                | 0.50          | 14.03.2007       |
| 7.      | R.T.           | K. Ramamurthy            | 0.60          | 01.03.2007       |
| 8.      | R.T.           | S. Jothi                 | 0.40          | 13.02.2007       |
| 9.      | LO             | R. Murugesan             | 0.50          | 26.10.2007       |
| 10.     | SOD            | K.S. Bakery              | 6.50          | 20.11.2008       |

11. Admittedly, most of the persons detailed above in whose names loans were sanctioned are close relatives of the petitioner. Vijayalakshmi is the wife of the petitioner. A loan is sanctioned in her name for the purpose of running

a store by name Vijayalakshmi Stores. The petitioner has given his property as security for this loan having limit of Rs. 4.00 lakhs. Even prior to this, another loan for Rs. 50,000 seems to have been sanctioned in her name. Education loan to the limit of Rs. 3,57,000 was sanctioned in the name of Kishore, the son of the petitioner. Loan is also sanctioned in the name of the three brothers of the petitioner and also in the names of two Sisters-in Law of the petitioner. There is also a loan in the name of one Murugesan. Though this Murugesan is not related to the petitioner, it is Vijayalakshmi who is the wife of the petitioner who has offered security for this loan.

12. One argument that has been advanced by the counsel for the Respondent is that though the Branch Manager was expected to get approval from his superior officer for sanction of the loans, the loan were sanctioned without obtaining any approval. The Authorized Representative of the petitioner has pointed out that it is not the duty of the petitioner to obtain approval from the higher authorities and he could not be found fault with if the Manager has not obtained approval before sanctioning loans to his relatives referred to. Certainly, it is not the responsibility of the petitioner and for this very reason there is no basis for the argument advanced in this respect, while dealing with the case of the petitioner.

13. The real charge against the petitioner is that the petitioner had managed to obtain loans in the names of all his close relatives by influencing the then Manager. The case is that the Manager who himself was committing several misappropriations has been doing this with the help of the petitioner and he has been obliging to the request of the petitioner to grant loans in the name of all these persons. It has been argued by the Authorized Representative of the petitioner that all these loans are in perfect order except for the fact that approval was not obtained from the superior officer in respect of certain of the loans. He has pointed out that all the loans are well secured. According to him, security was taken in respect of even the educational loan granted in the name of his son, Kishore, though security is not required for such loans.

14. It is not the fact that loans were granted to all these persons by the Manager, but that so many loans were granted in the names of so many close relatives of the petitioner that matters. All these loans are during the period from August 2006 to November 2008.

15. It could be seen that loans were obtained for certain activities but no such activities are seen done by the loanees. The counsel for the Respondent has referred to the report given by the Enquiry Officer on detection of the irregularities. This was marked in the enquiry proceedings (Page-319 of petitioner's typed set of documents). This states that though the Manager had sanctioned a secured overdraft limit of Rs. 4.00 lakhs as

working capital for M/s Sree Lakshmi Stores for proprietress Vijayalakshmi for provision shop in Building No. 2/236, the sanction was done without inspection of the unit. The sanction was given without obtaining copy of the license from the local authority to run the business. The Officer has visited the unit and has found that Room No. 2/236 is vacant. Apart from this is the fact that this room was found to be owned by some other person in the area. Even while the loan of Rs. 50,000 was subsisting fresh OD limit of Rs. 6.50 lakhs was sanctioned. It is stated in the report that on visiting the unit at the given address a shop was found there but it was in the name of some other person. The Enquiry Officer has reported that loan has been granted for a non-existent concern. There is another report which was also marked in the enquiry proceedings (Page-339 of the typed set of documents of the petitioner). Regarding loan to Sundaralingam, it is stated in the report that on enquiry he has denied to have received any loan amount and has stated that he has signed documents at the instance of the petitioner. In this respect, the counsel for the Respondent has referred to Ex.M7, the letter written by the petitioner to the Assistant General Manager of the Circle Office. What he has stated is that one day while going out of the branch, the Manager had told him to fill up the relevant forms and obtain the signature of the party and he had carried out the instructions. This of course, is not a transaction directly involving the petitioner. However, the admission would show that he is the one who had obtained the signature of Sundaralingam in the relevant documents. The statement of Sundaralingam is also seen marked in the enquiry proceedings. The evidence shows the complicity of the petitioner with the then Branch Manager.

16. Regarding the two loans granted to Murugesan, one in the name of himself and one in the name of K.S. Bakery said to have been run by him. The argument advanced by the Authorized Representative is that the very case of the Respondent is that these were obtained for the benefit of the Branch Manager. As already stated, the security for one loan in the name of Murugesan was offered by the wife of the petitioner. According to the petitioner, his brother and Murugesan were having joint business activities and it was at the request of his brother, the property has been offered as security. When the circumstances are taking into account this explanation of the petitioner could not be accepted. One after another, almost all the relatives of the petitioner, his wife, his son, his three brothers, his two Sisters-in Law, all were sanctioned loans by the Branch Manager. Though, all of them had availed loans purportedly for undertaking some business, no business is seen done by any of them. The Manager has not found it necessary to obtain the documents pertaining to the business before advancing loans. The common link in respect of all these loans is certainly the petitioner. So the petitioner could not absolve himself from responsibility. The Manager seems to have

been assisting the petitioner liberally and the petitioner seems to have been accepting his assistance. There could be no doubt that it was under the influence of the petitioner, all these loans were granted by the Manager. Probably, the Manager had found an accomplice in the petitioner for all his unlawful activities and it was in return of the assistance rendered by the petitioner that the loans were sanctioned in the name of the relatives of the petitioner. There is every justification for the finding by the Enquiry Officer that the second charge against the petitioner is proved.

17. So far as the third charge that the petitioner has obtained illegal gratification from one of the customers is concerned, the Enquiry Officer has found that this charge is not established. This finding has become final also.

18. The petitioner was given the punishment of Compulsory Retirement by the Disciplinary Authority and this has been upheld by the Appellate Authority. It could be seen from the facts of the case that the petitioner is a person who will go to any extent for his own benefit and has managed to make benefit even influencing the Branch Manager who is the prime officer of the branch. A staff of the bank who is dealing with the money of the people, in whatever capacity is expected to keep his integrity, be sincere and honest in all his dealings. The petitioner has deviated from this. The punishment that is imposed seems to be in proportion to the gravity of the misconduct on the irregularity committed. It will be embarrassing for the Respondent Bank to retain the petitioner in service even after detection of so much irregularities involving him. It was only proper that the punishment of Compulsory retirement was imposed on the petitioner. The petitioner is not entitled to any relief.

19. The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 13<sup>th</sup> December, 2013).

K. P. PRASANNA KUMARI, Presiding Officer

#### Witnesses Examined :

For the 1<sup>st</sup> Party/Petitioner : WW1, Sri K. Sampath

For the 2<sup>nd</sup> Party/Management : None

#### Documents Marked :

##### On the petitioner's side

| Ex.No. | Date                                   | Description                                 |
|--------|--|---|
| Ex.W1  | 04.02.2010                             | Charge Sheet ref. CO:CBE: VG:CS:459:2009-10 |
| Ex.W2  | 15.02.2010                             | Reply to the above charge sheet             |
| Ex.W3  | 18.03.2010<br>25.03.2010<br>16.04.2010 | Proceedings of the departmental enquiry     |



|        |            |   |  |            |  |
|--------|------------|---|--|------------|--|
| Ex.W4  | -          | Management and defence exhibits produced in the departmental enquiry                              | Ex.W22   | 30.04.2009 | Indian Bank HO/Risk Management Department Circular No. 12/2009-10 on Whistle Blower Policy reiteration     |
| Ex.W5  | 06.05.2010 | Written brief of the Presenting Officer   | <b>On the management's side</b>  |            |  |
| Ex.W6  | 17.05.2010 | Defense summing up  | Ex.No.   | Date       | Description  |
| Ex.W7  | 12.06.2010 | Findings of the Enquiry Officer   | Ex.M1  | 29.03.2007 | Application for credit to Business Enterprises for Rs. 50,000 to T. Sundaralingam and other loan documents |
| Ex.W8  | 29.06.2010 | Employees' comments on the Enquiry Officer's findings   | Ex.M2  | 12.08.2010 | Order of punishment issued to the Branch Manager Ajaya Gosh  |
| Ex.W9  | 12.08.2010 | Second Show Cause Notice issued to the employee   | Ex.M3  | 03.09.2010 | Proceedings of personal hearing before the Disciplinary Authority  |
| Ex.W10 | 31.08.2010 | Reply to the second show cause notice   | Ex.M4  | 29.08.2009 | Memo issued to the petitioner by the respondent – u/r – reference Co. CBE – V.G. 224, 2009-10              |
| Ex.W11 | 04.09.2010 | Order of the Disciplinary Authority imposing the punishment                                       | Ex.M5  | 10.10.2009 | Explanation of the petitioner for the memo dated 29.08.2009  |
| Ex.W12 | 14.10.2010 | Appeal preferred by the employee to Appellate Authority   | Ex.M6  | 02.11.2009 | Memo issued to the petitioner by the Respondent  |
| Ex.W13 | 17.02.2011 | Orders of the Appellate Authority confirming the punishment imposed upon the employee             | Ex.M7  | 27.11.2009 | Explanation of the petitioner to the memo dated 02.11.2009.  |
| Ex.W14 | 24.05.2011 | Petition under Section-2A of ID Act to Assistant Labour Commissioner                              | नई दिल्ली, 29 जनवरी, 2014  |            |  |
| Ex.W15 | 21.06.2011 | Reply by the management to the petition of the employee   | <b>का.आ. 517.</b> —औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मद्रास पत्तन न्यास के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चैन्नई के पंचाट (संदर्भ संख्या 102/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-1-2014 को प्राप्त हुआ था।                          |            |  |
| Ex.W16 | 20.07.2011 | Rejoinder to the management's reply   | [सं. एल-33015/1/2005-आई आर (बी-II)]<br>रवि कुमार, अनुभाग अधिकारी   |            |  |
| Ex.W17 | 20.08.2011 | Comments on the management to the rejoinder of the employee                                       | New Delhi, the 29th January, 2014  |            |  |
| Ex.W18 | 09.09.2011 | Comments of the employee to the management's second reply   | <b>S.O. 517.</b> —In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 102/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the Management of Madras Port Trust and their workmen, received by the Central Government on 29-1-2014. |            |  |
| Ex.W19 | 13.09.2011 | Comments of the management to the employee's reply  | [No. L-33015/1/2005-IR (B-II)]<br>RAVI KUMAR, Section Officer  |            |  |
| Ex.W20 | 06.04.2009 | Indian Bank HO/Risk Management Department Circular No. 2/2009-10 on Whistle Blower Policy 2009-10 |  |            |  |
| Ex.W21 | 08.06.2009 | Indian bank HO/Inspection Department Circular No. 22/2009-10 on Whistle Blower Policy reiteration |  |            |  |

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
CHENNAI**

Wednesday, the 30th October, 2013

**Present : K. P. PRASANNA KUMARI, Presiding Officer****Industrial Dispute No. 102/2005**

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Madras Port Trust and their workman).

**BETWEEN:**Sri G Narayansamy : 1<sup>st</sup> Party/Petitioner

AND

The Chairman : 2<sup>nd</sup> Party/Respondent

Madras Port Trust  
Rajaji Road  
Chennai-600001

**Appearance :**

For the 1<sup>st</sup> Party/ : M/s D. Sankaran & S.  
Petitioner Bhuvaneswaran, Advocates

For the 2<sup>nd</sup> Party/ : Sri M.R. Dharanichander,  
Management Advocate

**AWARD**

The Central Government, Ministry of Labour & Employment vide its Order No. L-33015/1/2005-IR(B-II) dated 14.09.2005 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

“Whether the action of the management of Madras Port Trust in reverting Sri G Narayanasamy from the post of Master Grade-II to the post of Peon and fixation of pay in the lower scale is legal and justified? If not, what relief is the disputant concerned entitled to?”

2. After receipt of the Industrial Dispute this Tribunal has numbered it as ID 102/2005 and issued notice to both sides. The parties appeared through their respective counsel and filed their claim and counter statement respectively.

3. The case of the petitioner in the Claim Statement is this:

The petitioner has joined the services of the Respondent in 1963 as Laskar, Grade-II. He was subsequently promoted as Deck Tindal and then Syrang. On 16.07.1982, he was promoted to the post of Master Grade-II with a Basic Salary of Rs. 1,090/-. As per the rules of Chennai Port Trust the petitioner had undergone

periodical medical check-up. The Medical report dated 14.08.1985 stated that the petitioner was having the illness of colour blindness. Consequently, he was posted in Group “C” job as a Peon. This act of the Respondent is illegal and is unfair labour practice. The petitioner has lost all the benefits he would have been entitled to if he had continued in the post of Master Grade-II. By way of difference in the emoluments in the posts of Peon and Master Grade-II, the petitioner is entitled to Rs. 11,79,000/- from the Respondent. The Respondent may be directed to pay the above amount to the petitioner.

4. The Respondent has filed Counter Statement contending as follows :

The dispute is not maintainable. The Management has offered alternate employment as Peon to the petitioner in the year 1986 since he was found unfit to carry out the duties of Master Grade-II due to his impaired vision in both the eyes. The petitioner has accepted the post. It would not have been possible to allow the petitioner to continue in the post of Master Grade-II with his impaired vision. The petitioner has voluntarily accepted the alternate employment of a Peon offered by the Respondent. He had worked in the said post for more than 6 years before he challenged it. The drop in wages on account of the alternative employment was made good by granting an amount of Rs. 336.12 per month from the Madras Port Trust Employee’s Contributory Loss in Wages Compensation Scheme w.e.f. 19.02.1986. The petitioner has accepted the same till his superannuation on 30.06.1994. The petitioner has not lost monetarily because of the alternate employment. The petitioner cannot challenge the same after 8 years of his retirement from service. The petitioner is not entitled to any relief.

5. The evidence in the case consists of the oral evidence of WW1, WW2 and MW1 and documentary evidence consisting of Exs.W1 to Exs.W12 and Exs.M1 to Exs.M6.

**6. The points for consideration are:**

- (i) Whether the action of the Madras Port Trust in reverting the petitioner to the post of Peon and fixation of pay in the scale of Peon is legal and justified?
- (ii) What is the relief to which the petitioner is entitled?

**The Points**

7. The petitioner had admittedly joined the services of the Madras Port Trust, Chennai as Laskar Grade-II in 1963 and had rose to the position of Master Grade-II by promotion in 1982. He had worked in the position of Master Grade-II until 1986. The rules of Madras Port Trust provide that the employees should undergo periodical medical check-up. On one such medical check-up, the petitioner was found to be colour blind. Ex.M1 is copy of the Medical

Certificate signed by the Medical Officer on 14.05.1985. The Medical Certificate states that because of the illness the petitioner is unfit to carry out the duties of Master Grade-II. The Management found another job for the petitioner as Peon and he accepted this post. Ex.M2 is the copy of the letter given by the petitioner to the Management stating his willingness to take up the alternate appointment of Peon. As seen from Ex.M3, the petitioner was relieved from the post of Master Grade-II on 19.02.1986. Ex.M4 shows that he joined duty as Peon with the Controller of Stores of Madras Port on 19.02.1986 itself.

8. Exs.W1 to Ex.W6 are the different representations said to have been given by the petitioner to the Respondent in 1987 requesting to put him back in the original department. One does not know if his representations were actually sent to the Management since the acknowledgments for the same are not available.

9. The counsel for the petitioner has referred to Ex.M1, the Medical Report and tried to argue that some malpractice has been played on the petitioner by giving such a medical report. I am not inclined to consider this argument of the counsel for the petitioner for the very reason that a contention challenging the medical report has not been raised in the claim petition at all. The petitioner has accepted the job of Peon given to him on the basis of the medical report and had been promoted from this post and had continued in service until his date of superannuation. There is no meaning in contending, now, after all these years, that the medical report on the basis of which he was given the alternate job is based on a malpractice. Apart from this is the fact that the petitioner himself has admitted during his cross-examination that by the medical examination he was found to have colour blindness and was classified CC1. That means he was even then aware of the illness himself and knew quite well that he was unfit to continue in the job of Master Grade-II which required manoeuvring a boat and taking pilots of ships to and fro from the ships.

10. The argument that is mainly stressed by the counsel for the petitioner is that even though the petitioner was given an alternate employment with a lesser pay, he was entitled for protection of the pay that he was receiving as Master Grade-II. In fact the very claim in the claim statement is for a direction to the Respondent to make good the loss due to the difference in the pay of the two posts.

11. The counsel for the petitioner has referred to the decision in *Rajpal Vs. Delhi Transport Corporation* reported in 2012 1 LLJ 529 in support of his argument that the petitioner is entitled to make good the monetary loss that ensued to him on account of his reduction to a lower status. In the above decision the Delhi High Court relied upon an earlier decision in *DTC Vs. Rajbir Singh* reported in 2003 1 LLJ 865. The decision was rendered based on Section-47 of the Persons with Disabilities (Equal

Opportunities, Protection of Rights and Full Participation), Act. Section-47 of the Act mandates that no establishment shall dispense with or reduce in rank the employee who acquires the disability during his service. Even if he is not suitable for the post he was holding as a result of the disability he is to be shifted to some other post with same pay scale and service benefits. It was further held that even when he cannot be adjusted against any other post, he is to be kept on supernumerary post unless a suitable post is available or he attains the age of superannuation. In the very said case it was held that Section-47 of the Disabilities Act would have retrospective effect to cover the period during which the workman's services were terminated which was prior to the enactment of the Disabilities Act. In the present case the services of the petitioner was not terminated but he was put in a lower post causing inconvenience and monetary loss to him. In such case also Section-47 of the Disabilities Act should have retrospective effect so that the monetary loss if any, could be made good, as held in *Rajpal's case* (referred to above).

12. The contention that has been raised by the counsel for the Respondent is that the petitioner has not sustained any monetary loss on account of his having been shifted to a lower post. In the Counter Statement itself the Respondent has contended that the drop in wages on account of the alternative appointment was made good by granting a sum of Rs. 336.12 per month from the Madras Port Trust Employee's Contributory Loss in Wages Compensation Scheme w.e.f. 19.02.1986. According to the Respondent, the petitioner has accepted the same and enjoyed it till his superannuation and therefore is not entitled to make any claim now. During his cross-examination, the petitioner has admitted that he was drawing Rs. 336.12 as per the Madras Port Trust Employee's Contributory Loss in Wages Compensation Scheme towards difference in the basic pay on account of his having been shifted to the post of Peon.

13. Was the petitioner actually compensated wholly on account of his monetary loss consequent to his having been shifted to the post of Peon? It is clear from the decision earlier referred to based on Section-47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation), Act that the employee is entitled to have made good whatever loss that was incurred by him on account of having been shifted to a lower post with lesser pay. The loss of the petitioner could not have been compensated by paying him the difference in the Basic Pay only. In the higher post of Master Grade-II he would have been entitled to Dearness Allowance on the basic pay and also periodical increments. Apart from this is the benefits that would have due to him on account of any promotions he would have obtained, if not for his illness resulting in his being shifted to a lower post. Then there is also the fact that his pension was calculated based on his

pay in the lower grade and not in the post of Master Grade-II or the post to which he would have been promoted. It is clear from the evidence of WW2, a colleague of the petitioner who had been working in the post of Master Grade-II and had retired from this post that there is vast difference in the pension itself. As seen from the evidence of WW2 and Ex.W12, the extract of the bank account submitted by him, he is drawing almost Rs. 16,000/- per month as pension itself. The amount drawn by the petitioner seems to be around Rs. 7,500/- a month. So the monetary loss incurred by the petitioner on account of this having been posted to a lower post is very huge. The Respondent is liable to make good the loss. Accordingly, the following directions are made:

“The Respondent shall calculate the difference in the pay scale of Master Grade-II or its promotional post and from that of the post of Peon and find out the monetary loss incurred by the petitioner after he has assumed charge as Peon and pay the entire amount due to the petitioner within a period of two months. The Respondent shall also calculate the pension of the petitioner based on his pay that he would have drawn in the post of Master Grade-II or its promotional post as the case may be at the time of his retirement and re-fix his pension and make good the loss incurred by him in his pensionary benefits and pension, within two months. If the above amounts are not paid within the requisite period it would carry interest @ 9% per annum from the date of the order”.

14. The reference is thus answered in favour of the petitioner.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 30<sup>th</sup> October, 2013).

K. P. PRASANNA KUMARI, Presiding Officer

#### **Witnesses Examined :**

For the 1<sup>st</sup> Party/ : WW1, Sri G. Narayanasamy  
Petitioner Union WW2, Sri T. Manickam

For the 2<sup>nd</sup> Party/ : MW1, Sri A.S. Ramamuruges  
Management

#### **Documents Marked :**

##### **On the petitioner's side**

| Ex.No. | Date       | Description                  |
|--------|------------|------------------------------|
| Ex.W1  | 21.01.1987 | Petitioner to the Respondent |
| Ex.W2  | 13.03.1987 | Petitioner to the Respondent |
| Ex.W3  | 06.04.1987 | Petitioner to the Respondent |
| Ex.W4  | 19.06.1987 | Petitioner to the Respondent |
| Ex.W5  | 05.08.1987 | Petitioner to the Respondent |
| Ex.W6  | 23.10.1987 | Petitioner to the Respondent |

|        |            |  |
|--------|------------|--|
| Ex.W7  | 07.04.2005 | Writ Petition filed through Union Secretary W.P.No. 2929/1996-Order                                  |
| Ex.W8  | 09.05.2012 | RTI filed by the petitioner  |
| Ex.W9  | 28.05.2012 | Respondent to Petitioner under RTI   |
| Ex.W10 | 22.06.2012 | Respondent to Petitioner under RTI   |
| Ex.W11 | -          | Pension Calculation Sheet of ex-employee T. Manickam, worked as Master Grade-II in Marine Department |
| Ex.W12 | -          | Copy of face of IOB Pass Book and statement sheet showing pension drawn by Sri T.Manickam            |

##### **On the Management's side**

| Ex.No. | Date       | Description   |
|--------|------------|---|
| Ex.M1  | 14.05.1985 | Medical Certificate issued by the Medical Officer to the petitioner |
| Ex.M2  | 21.12.1985 | Letter given by the petitioner to the Respondent                    |
| Ex.M3  | 19.02.1986 | Letter issued by the Respondent to the Petitioner                   |
| Ex.M4  | 19.02.1986 | Joining report given by the petitioner to the Respondent            |
| Ex.M5  | 24.02.1986 | Scheme announced by the Respondent                                  |
| Ex.M6  | -          | Medical Classification  |

नई दिल्ली, 29 जनवरी, 2014

**का.आ. 518.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 14/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-1-2014 को प्राप्त हुआ था।

[सं. एल-12012/60/2010-आई आर (बी-II)]  
रवि कुमार, अनुभाग अधिकारी

New Delhi, the 29th January, 2014

**S.O. 518.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 14/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure in the Industrial Dispute between the Management of Bank of India and their workmen, received by the Central Government on 29-1-2014.

[No. L-12012/60/2010-IR (B-II)]  
RAVI KUMAR, Section Officer



**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
AHMEDABAD****Present :**

Binay Kumar Sinha,  
Presiding Officer, CGIT-cum-Labour Court,  
Ahmedabad,

Dated 13<sup>th</sup> August, 2013

**Reference : CGITA 14 of 2011**

1. The Zonal Manager,  
Bank of India  
Zonal Office, Bhadra,  
Ahmedabad (Gujarat)
2. The Branch Manager,  
Bank of India,  
Ellisbridge branch,  
Ahmedabad (Gujarat) ....First Party

**And**

Their Workman

Sh. Solanki Ashwin Shivilal  
D-16, Staff Quarters, V.S. Hospital,  
Ellisbridge,  
Ahmedabad (Gujarat) ....Second Party

For the 1<sup>st</sup> party : Mrs. Meenaben Shah, Advocate

For the 2<sup>nd</sup> party : Shri M.L. Acharya, Advocate

**AWARD**

As per order No-L-12012/60/2010-IR(B-II))  
New Delhi, dated 25.02.2011, the Central Government/  
Ministry of Labour, under cl. (d) of sub-section (1) and  
sub-section (2A) of Section 10 of the I.D. Act, 1947 referred  
the dispute for adjudication in terms of reference under  
the schedule :

**SCHEDULE**

“Whether the action of the management of Zonal Manager, Bank of India, and Ahmedabad in not considering the case of Shri Ashwin Shivilal Solanki for regularization is justified and proper? What relief the workman is entitled to?”

2. The 2<sup>nd</sup> party submitted statement of claim (Ext.7) that he was working as a labour worker since April 1994 at Ellisbridge branch of Bank of India and has worked for more than 240 days in a year from 1994, and he worked for 15 days as sweeper-cum-peon, was getting wages on vouchers. He represented for his regularization as he had completed 90 days work continuously but he was not absorbed as per Bank policy but he was stopped to do work in the Bank branch. So prayer for his absorption as per similar situated employees with back wages.

3. The 1<sup>st</sup> party Bank appeared through lawyer and the case is fixed for filing w.s.

4. In the meantime, the workman (2nd party) filed a withdrawal pursis (Ext.8) on 05.08.2013 and it was noted down by the 1<sup>st</sup> party's lawyer having no objection. Then the withdrawal pursis was moved and pressed on this date (13.08.2013). The 2<sup>nd</sup> party workman on assurance of the Bank in view of issuance of a letter on 01.08.2013 for recruitment of peon has intended to withdraw this reference case and mentioning not want to make contest in this case.

5. Thus the dispute appears to have been settled between the parties and so the concerned workman on assurance extended from the Bank, has intended to withdraw this reference case by filing withdrawal pursis (Ext.8).

6. Now the dispute between the parties have been resolved and settled as per withdrawal pursis (Ext.8). So, there is no need to adjudicate upon the terms of reference.

So, no dispute award is passed.

B. K. SINHA, Presiding Officer